

By 

H. B. 2646

A BILL TO BE ENTITLED

AN ACT

relating to the powers, duties and jurisdiction of the Texas Water Development Board and the Texas Water Commission or its successor agency and transferring certain responsibilities to the Texas Water Development Board.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 5.119, Water Code, is amended to read as follows:

6 Sec. 5.119. COMMISSION TO BE KNOWLEDGEABLE. The commission shall
7 be knowledgeable of the watercourses and natural resources of the state and of the needs
8 of the state concerning ~~[the use, storage and conservation of water and]~~ the use and
9 conservation of other natural resources and of the need to maintain the quality of the
10 environment in the state.

11 SECTION 2. Section 5.235, Water Code, is amended to read as follows:

12 Sec. 5.235. FEES. (a) The executive director shall charge and collect the fees
13 prescribed by this section. The executive director shall make a record of fees prescribed
14 when due and shall render an account to the person charged with the fees. Each fee is
15 a separate charge and is in addition to other fees unless provided otherwise.

16 (b) Except as specifically provided by this section, the fee for filing an application
17 or petition is \$100 plus the cost of any required notice. The fee for a by-pass permit shall
18 be set by the commission at a reasonable amount to recover costs, but not less than \$100.

19 ~~[(c) The fee for filing a water permit application is \$100 plus the cost of required~~
20 ~~notice.]~~

21 ~~[(d) The fee for filing an application for fixing or adjusting rates is \$100 plus the~~
22 ~~cost of required notice.]~~

1 ~~[(e) A person who files with the commission a petition for the creation of a water~~
2 ~~district or addition of sewage and drainage powers or a resolution for a water district~~
3 ~~conversion must pay a one-time nonrefundable application fee. The commission by rule~~
4 ~~may set the application fee in an amount not to exceed \$700, plus the cost of required~~
5 ~~notice. This fee is the only fee that the commission may charge with regard to the~~
6 ~~processing of an application for creation of a water district, addition of sewage or~~
7 ~~drainage powers, or conversion under this code.]~~

8 ~~[(f) A person who files a bond issue application with the commission must pay~~
9 ~~an application fee set by the commission. The commission by rule may set the~~
10 ~~application fee in an amount not to exceed \$500, plus the cost of required notice. If the~~
11 ~~bonds are approved by the commission, the seller shall pay to the commission a~~
12 ~~percentage of the bond proceeds not later than the seventh business day after receipt of~~
13 ~~the bond proceeds. The commission by rule may set the percentage of the proceeds in~~
14 ~~an amount not to exceed 0.25 percent of the principal amount of the bonds actually~~
15 ~~issued. Revenue from these fees shall be deposited in the state treasury and credited to~~
16 ~~the water quality fund. Proceeds of the fees shall be used to supplement any other funds~~
17 ~~available for paying expenses of the commission in supervising the various bond and~~
18 ~~construction activities of the districts filing the applications.]~~

19 ~~[(g)](c)~~ The fee for recording an instrument in the office of the commission is
20 \$1.25 per page.

21 ~~[(h) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.~~

22 ~~(i) The fee for impounding water, except under Section 11.142 of this code, is 50~~
23 ~~cents per acre-foot of storage, based on the total holding capacity of the reservoir at~~
24 ~~normal operating level.~~

25 ~~(j) The fee for other uses of water not specifically named in this section is \$1 per~~

1 ~~acre foot, except that no political subdivision may be required to pay fees to use water~~
2 ~~for recharge of underground freshwater bearing sands and aquifers or for abatement of~~
3 ~~natural pollution.~~

4 ~~(k) A fee charged under this section for one use of water under a permit from the~~
5 ~~commission may not exceed \$25,000. The fee for each additional use of water under a~~
6 ~~permit for which the maximum fee is paid may not exceed \$5,000.~~

7 ~~(l) The fees prescribed by Subsections (h) through (j) of this section are one-time~~
8 ~~fees, payable when the application for an appropriation is made. However, if the total fee~~
9 ~~for a permit exceeds \$1,000, the applicant shall pay one-tenth of the fee when the~~
10 ~~application is filed, one-tenth within 30 days after notice is mailed to him that the permit~~
11 ~~is granted, and the balance before he begins to use water under the permit. If the~~
12 ~~applicant does not pay all of the amount owed before beginning to use water under the~~
13 ~~permit, the permit is annulled.~~

14 ~~(m) If a permit is annulled, the matter reverts to the status of a pending, filed~~
15 ~~application and, on the payment of use fees as provided by this subsection together with~~
16 ~~sufficient postage fees for mailing notice of hearing, the commission shall set the~~
17 ~~application for hearing and proceed as provided by this code.~~

18 ~~(n) — (1) Each provider of potable water or sewer utility service shall collect a~~
19 ~~regulatory assessment from each retail customer as follows:~~

20 ~~(A) A public utility as defined in Section 13.002 of this code shall~~
21 ~~collect from each retail customer a regulatory assessment equal to one percent of the~~
22 ~~charge for retail water or sewer service.~~

23 ~~(B) A water supply or sewer service corporation as defined in~~
24 ~~Section 13.002 of this code shall collect from each retail customer a regulatory assessment~~
25 ~~equal to one half of one percent of the charge for retail water or sewer service.~~

1 ~~(C) A district as defined in Section 50.001 of this code that~~
2 ~~provides potable water or sewer utility service to retail customers shall collect from each~~
3 ~~retail customer a regulatory assessment equal to one half of one percent of the charge for~~
4 ~~retail water or sewer service.~~

5 ~~(2) The regulatory assessment may be listed on the customer's bill as a~~
6 ~~separate item and shall be collected in addition to other charges for utility services.~~

7 ~~(3) The commission shall use the assessments collected from districts~~
8 ~~solely to pay costs and expenses incurred by the commission in the regulation of districts.~~

9 ~~(4) The commission shall use the assessments collected from water supply~~
10 ~~or sewer service corporations solely to pay costs and expenses incurred by the~~
11 ~~commission in the regulation of water supply or sewer service corporations.~~

12 ~~(5) The commission shall use the assessments collected from public~~
13 ~~utilities solely to pay costs and expenses incurred by the commission in the regulation of~~
14 ~~public utilities.~~

15 ~~(6) The commission shall annually use a portion of the assessments to~~
16 ~~provide on-site technical assistance and training to public utilities, water supply or sewer~~
17 ~~service corporations, and districts. The commission shall contract with others to provide~~
18 ~~the services.~~

19 ~~(7) Except as provided by Paragraph (A) of this subdivision, assessments~~
20 ~~collected from retail customers for the prior 12 months are due on January 15 of each~~
21 ~~year. The executive director shall collect all assessments from the utility service~~
22 ~~providers, and those funds shall be paid into the state treasury and credited to the water~~
23 ~~utility fund.~~

24 ~~(A) A utility service provider may make quarterly payments due~~
25 ~~on January 15, April 15, July 15, and October 15 of each year. If payments are made~~

1 ~~quarterly and received by the commission not later than the 30th day after the due date,~~
2 ~~the utility service provider may retain an administrative fee equal to 10 percent of the~~
3 ~~amount due for costs incurred in collecting and remitting the assessment.~~

4 ~~(B) The commission shall assess on a utility service provider a~~
5 ~~penalty equal to 10 percent of the amount due for any payment received after January 31.~~
6 ~~Funds delinquent for more than 30 days shall draw interest at the rate of 10 percent a~~
7 ~~year on the assessment and penalty due.~~

8 ~~(C) The commission shall assess a penalty against a municipality~~
9 ~~with a population of more than 1.5 million that does not provide municipal water and~~
10 ~~sewer services in an annexed area on or before 4 1/2 years after the annexation takes~~
11 ~~effect in accordance with Section 43.056, Local Government Code. A penalty assessed~~
12 ~~under this paragraph shall be not more than \$1,000 for each day the services are not~~
13 ~~provided after 4 1/2 years after the annexation. A penalty collected under this paragraph~~
14 ~~shall be deposited into a special fund in the state treasury to be used to provide water and~~
15 ~~sewer service to residents of the city.~~

16 ~~(8) The regulatory assessment does not apply to water that has not been~~
17 ~~treated for the purpose of human consumption.]~~

18 SECTION 3. Amend Section 6.012 of the Water Code to read as follows:

19 Sec. 6.012. GENERAL DUTIES AND RESPONSIBILITIES (a) The board has
20 general jurisdiction over:

- 21 (1) use of state water;
22 (2) [(1)] the development of a statewide water plan;
23 (3) [(2)] the administration of the state's various water assistance and
24 financing programs including those created by the constitution; and
25 (4) [(3)] other areas specifically assigned to the board by this code or other

1 law.

2 SECTION 4. Chapter 6, Water Code, is amended by adding Section 6.196.

3 Sec. 6.196 FEES. (a) The executive administrator shall charge and collect the
4 fees prescribed by this section. The executive administrator shall make a record of fees
5 prescribed when due and shall render an account to the person charged with the fees.
6 Each fee is a separate charge and is in addition to other fees unless provided otherwise.

7 (b) The fee for filing a water permit application is \$100 plus the cost of required
8 notice.

9 (c) The fee for filing an application for fixing or adjusting rates is \$100 plus the
10 cost of required notice.

11 (d) A person who files with the board a petition for the creation of a water
12 district or addition of sewage and drainage powers or a resolution for a water district
13 conversion must pay a one-time nonrefundable application fee. The board by rule may
14 set the application fee in an amount not to exceed \$700, plus the cost of required notice.
15 This fee is the only fee that the board may charge with regard to the processing of an
16 application for creation of a water district, addition of sewage or drainage powers, or
17 conversion under this code.

18 (e) A person who files a bond issue application with the board must pay an
19 application fee set by the board. The board by rule may set the application fee in an
20 amount not to exceed \$500, plus the cost of required notice. If the bonds are approved
21 by the board, the seller shall pay to the board a percentage of the bond proceeds not later
22 than the seventh business day after receipt of the bond proceeds. The board by rule may
23 set the percentage of the proceeds in an amount not to exceed 0.25 percent of the
24 principal amount of the bonds actually issued. Revenue from these fees shall be
25 deposited in the state treasury and credited to the water quality fund. Proceeds of the fees

1 shall be used to supplement any other funds available for paying expenses of the board
2 in supervising the various bond and construction activities of the districts filing the
3 applications.

4 (f) The fee for recording an instrument in the office of the board is \$1.25 per
5 page.

6 (g) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

7 (h) The fee for impounding water, except under Section 11.142 of this code, is
8 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at
9 normal operating level.

10 (i) The fee for other uses of water not specifically named in this section is \$1 per
11 acre-foot, except that no political subdivision may be required to pay fees to use water
12 for recharge of underground freshwater-bearing sands and aquifers or for abatement of
13 natural pollution.

14 (j) A fee charged under this section for one use of water under a permit from the
15 board may not exceed \$25,000. The fee for each additional use of water under a permit
16 for which the maximum fee is paid may not exceed \$5,000.

17 (k) The fees prescribed by Subsections (g) through (i) of this section are one-time
18 fees, payable when the application for an appropriation is made. However, if the total fee
19 for a permit exceeds \$1,000, the applicant shall pay one-tenth of the fee when the
20 application is filed, one-tenth within 30 days after notice is mailed to him that the permit
21 is granted, and the balance before he begins to use water under the permit. If the
22 applicant does not pay all of the amount owed before beginning to use water under the
23 permit, the permit is annulled.

24 (l) If a permit is annulled, the matter reverts to the status of a pending, filed
25 application and, on the payment of use fees as provided by this subsection together with

1 sufficient postage fees for mailing notice of hearing, the board shall set the application
2 for hearing and proceed as provided by this code.

3 (m) (1) Each provider of potable water or sewer utility service shall collect a
4 regulatory assessment from each retail customer as follows:

5 (A) A public utility as defined in Section 13.002 of this code shall
6 collect from each retail customer a regulatory assessment equal to one percent of the
7 charge for retail water or sewer service.

8 (B) A water supply or sewer service corporation as defined in
9 Section 13.002 of this code shall collect from each retail customer a regulatory assessment
10 equal to one-half of one percent of the charge for retail water or sewer service.

11 (C) A district as defined in Section 50.001 of this code that
12 provides potable water or sewer utility service to retail customers shall collect from each
13 retail customer a regulatory assessment equal to one-half of one percent of the charge for
14 retail water or sewer service.

15 (2) The regulatory assessment may be listed on the customer's bill as a
16 separate item and shall be collected in addition to other charges for utility services.

17 (3) The board shall use the assessments collected from districts solely to
18 pay costs and expenses incurred by the board in the regulation of districts.

19 (4) The board shall use the assessments collected from water supply or
20 sewer service corporations solely to pay costs and expenses incurred by the commission
21 in the regulation of water supply or sewer service corporations.

22 (5) The board shall use the assessments collected from public utilities
23 solely to pay costs and expenses incurred by the board in the regulation of public utilities.

24 (6) The board shall annually use a portion of the assessments to provide
25 on-site technical assistance and training to public utilities, water supply or sewer service

1 corporations, and districts. The board shall contract with others to provide the services.

2 (7) Except as provided by Paragraph (A) of this subdivision, assessments
3 collected from retail customers for the prior 12 months are due on January 15 of each
4 year. The executive administrator shall collect all assessments from the utility service
5 providers, and those funds shall be paid into the state treasury and credited to the water
6 utility fund.

7 (A) A utility service provider may make quarterly payments due
8 on January 15, April 15, July 15, and October 15 of each year. If payments are made
9 quarterly and received by the board not later than the 30th day after the due date, the
10 utility service provider may retain an administrative fee equal to 10 percent of the amount
11 due for costs incurred in collecting and remitting the assessment.

12 (B) The board shall assess on a utility service provider a penalty
13 equal to 10 percent of the amount due for any payment received after January 31. Funds
14 delinquent for more than 30 days shall draw interest at the rate of 10 percent a year on
15 the assessment and penalty due.

16 (C) The board shall assess a penalty against a municipality with
17 a population of more than 1.5 million that does not provide municipal water and sewer
18 services in an annexed area on or before 4-1/2 years after the annexation takes effect in
19 accordance with Section 43.056, Local Government Code. A penalty assessed under this
20 paragraph shall be not more than \$1,000 for each day the services are not provided after
21 4-1/2 years after the annexation. A penalty collected under this paragraph shall be
22 deposited into a special fund in the state treasury to be used to provide water and sewer
23 service to residents of the city.

24 (8) The regulatory assessment does not apply to water that has not been
25 treated for the purpose of human consumption.

1 SECTION 5. Section 11.002, Water Code, is amended as follows:

2 Sec. 11.002. DEFINITIONS. In this chapter and in Chapter 12 of this code:

3 ~~[(1)] "Commission" means the Texas Natural Resource Conservation~~
4 ~~Commission.]~~

5 (1) ~~[(2)]~~ "Board" means the Texas Water Development Board.

6 (2) ~~[(3)]~~ "Executive administrator ~~[director]~~" means the executive
7 administrator ~~[director]~~ of the Texas Water Development Board ~~[Texas Natural Resource~~
8 ~~Conservation Commission]~~.

9 (3) ~~[(4)]~~ "Beneficial use" means use of the amount of water which is
10 economically necessary for a purpose authorized by this chapter, when reasonable
11 intelligence and reasonable diligence are used in applying the water to that purpose.

12 (4) ~~[(5)]~~ "Water right" means a right acquired under the laws of this state
13 to impound, divert, or use state water.

14 (5) ~~[(6)]~~ "Appropriator" means a person who has made beneficial use of
15 any water in a lawful manner under the provisions of any act of the legislature before the
16 enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended,
17 and who has filed with the State Board of Water Engineers a record of his appropriation
18 as required by the 1913 Act, as amended, or a person who makes or has made beneficial
19 use of any water within the limitations of a permit lawfully issued by the commission or
20 one of its predecessors.

21 (6) ~~[(7)]~~ Renumbered as subd. (6) by Acts 1985, 69th Leg., ch. 795,
22 §1.003, eff. Sept. 1, 1985.

23 (7) ~~[(8)]~~ "Conservation" means:

24 (A) the development of water resources; and

25 (B) those practices, techniques, and technologies that will

1 reduce the consumption of water, reduce the loss or waste of water, improve the
2 efficiency in the use of water, or increase the recycling and reuse of water so that a water
3 supply is made available for future or alternative uses.

4 SECTION 6. Section 11.004, Water Code, is amended to read as follows:

5 Sec. 11.004. BOARD [~~COMMISSION~~] TO RECEIVE CERTIFIED COPIES OF
6 JUDGMENTS, ETC.

7 When any court of record renders a judgment, decree, or order affecting the title
8 to any water right, claim, appropriation, or irrigation facility or affecting any matter over
9 which the board [~~commission~~] is given supervision by law, the clerk of the court shall
10 immediately transmit to the board [~~commission~~] a certified copy of the judgment, decree,
11 or order.

12 SECTION 7. Section 11.026, Water Code, is amended to read as follows:

13 Sec. 11.026. PERFECTION OF AN APPROPRIATION.

14 No right to appropriate water is perfected unless the water has been beneficially
15 used for a purpose stated in the original declaration of intention to appropriate water or
16 stated in a permit issued by the board [~~commission~~] or one of its predecessors.

17 SECTION 8. Section 11.031, Water Code, is amended to read as follows:

18 Sec. 11.031. ANNUAL REPORT (a) Not later than March 1 of each year, each
19 person who has a water right issued by the board [~~commission~~] or who impounded,
20 diverted, or otherwise used state water during the preceding calendar year shall submit
21 a written report to the board [~~commission~~] on a form prescribed by the board
22 [~~commission~~]. The report shall contain all information required by the board
23 [~~commission~~] to aid in administering the water law and in making inventory of the state's
24 water resources. However, with the exception of those persons who hold water rights,
25 no report is required of persons who take water solely for domestic or livestock purposes.

1 (b) A person who fails to file an annual report with the board [~~commission~~] as
2 required by this section is liable to a penalty of \$25, plus \$1 per day for each day he fails
3 to file the statement after March 1. However, the maximum penalty under this section
4 is \$150. The state may sue to recover the penalty.

5 (c) The board [~~commission~~] may waive the requirements of Subsection (a) of this
6 section for a person who has a water right or uses state water in an area of the state
7 where watermaster operations are established.

8 SECTION 9. Section 11.034, Water Code, is amended to read as follows:

9 Sec. 11.034. RESERVOIR SITE: LAND AND RIGHTS-OF-WAY.

10 An appropriator who is authorized to construct a dam or reservoir is granted the
11 right-of-way, not to exceed 100 feet wide, and the necessary area for the site, over any
12 public school land, university land, or asylum land of this state and the use of the rock,
13 gravel, and timber on the site and right-of-way for construction purposes, after paying
14 compensation as determined by the board [~~commission~~]. An appropriator may acquire
15 the reservoir site and rights-of-way over private land by contract.

16 SECTION 10. Section 11.035, Water Code, is amended to read as follows:

17 Sec. 11.035. CONDEMNATION OF PRIVATE PROPERTY. (a) An
18 appropriator may obtain rights-of-way over private land and may obtain the land
19 necessary for pumping plants, intakes, headgates, and storage reservoirs by condemnation.

20 (b) The party obtaining private property by condemnation shall cause damages
21 to be assessed and paid for as provided by the statutes of this state relating to eminent
22 domain.

23 (c) If the party exercising the power granted by this section is not a corporation
24 district, city, or town, he shall apply to the board [~~commission~~] for the condemnation.

25 (d) The executive administrator [~~director~~] shall have the proposed condemnation

1 investigated. After the investigation, the board [~~commission~~] may give notice to the party
2 owning the land proposed to be condemned and hold a hearing on the proposed
3 condemnation.

4 (e) If after a hearing the board [~~commission~~] determines that the condemnation
5 is necessary, the executive administrator [~~director~~] may institute condemnation
6 proceedings in the name of the State of Texas for the use and benefit of the party who
7 applied for the condemnation and all others similarly situated.

8 (f) The parties at whose instance a condemnation suit is instituted shall pay the
9 costs of the suit and condemnation in proportion to the benefits received by each party
10 as fixed by the board [~~commission~~]. Before using any of the condemned rights or
11 property, a party receiving the rights or property shall pay the amount of costs fixed by
12 the board [~~commission~~].

13 (g) If, after the costs of the condemnation proceedings have been paid, a party
14 seeks to take the benefits of the condemnation proceedings, he shall apply to the board
15 [~~commission~~] for the benefits. The board [~~commission~~] may grant the application and fix
16 the fees and charges to be paid by the applicant.

17 SECTION 11. Section 11.036, Water Code, is amended as follows:

18 Sec. 11.036. CONSERVED OR STORED WATER: SUPPLY CONTRACT

19 (a) A person, association of persons, corporation, or water improvement or
20 irrigation district having in possession and control any storm water, floodwater, or
21 rainwater that is conserved or stored as authorized by this chapter may contract to supply
22 the water to any person, association of persons, corporation, or water improvement or
23 irrigation district having the right to acquire use of the water.

24 (b) The price and terms of the contract shall be just and reasonable and without
25 discrimination, and the contract is subject to the same revision and control as provided

1 in this code for other water rates and charges. If any person uses the stored or conserved
2 water without first entering into a contract with the party that conserved or stored it, the
3 user shall pay for the use at a rate determined by the board [~~commission~~] to be just and
4 reasonable, subject to court review as in other cases.

5 SECTION 12. Section 11.041, Water Code, is amended as follows:

6 Sec. 11.041. DENIAL OF WATER: COMPLAINT (a) Any person entitled to
7 receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from
8 any conserved or stored supply may present to the board [~~commission~~] a written petition
9 showing:

10 (1) that he is entitled to receive or use the water;

11 (2) that he is willing and able to pay a just and reasonable price for the
12 water;

13 (3) that the party owning or controlling the water supply has water not
14 contracted to others and available for the petitioner's use; and

15 (4) that the party owning or controlling the water supply fails or refuses
16 to supply the available water to the petitioner, or that the price or rental demanded for the
17 available water is not reasonable and just or is discriminatory.

18 (b) If the petition is accompanied by a deposit of \$25, the executive administrator
19 [~~director~~] shall have a preliminary investigation of the complaint made and determine
20 whether or not there are probable grounds for the complaint.

21 (c) If, after preliminary investigation, the executive administrator [~~director~~]
22 determines that probable grounds exist for the complaint, the board [~~commission~~] shall
23 enter an order setting a time and place for a hearing on the petition.

24 (d) The board [~~commission~~] may require the complainant to make an additional
25 deposit or execute a bond satisfactory to the board [~~commission~~] in an amount fixed by

1 the board [~~commission~~] conditioned on the payment of all costs of the proceeding.

2 (e) At least 20 days before the date set for the hearing, the board [~~commission~~]
3 shall transmit by registered mail a certified copy of the petition and a certified copy of
4 the hearing order to the person against whom the complaint is made.

5 (f) The board [~~commission~~] shall hold a hearing on the complaint at the time and
6 place stated in the order. It may hear evidence orally or by affidavit in support of or
7 against the complaint, and it may hear arguments. On completion of the hearing, the
8 board [~~commission~~] shall render a written decision.

9 (g) If, after the preliminary investigation, the executive administrator [~~director~~]
10 determines that no probable grounds exist for the complaint, the executive administrator
11 [~~director~~] shall dismiss the complaint. The board [~~commission~~] may either return the
12 deposit or pay it into the State Treasury.

13 SECTION 13. Section 11.042, Water Code, is amended as follows:

14 Sec. 11.042. DELIVERING WATER DOWN BANKS AND BEDS. Under rules
15 prescribed by the board [~~commission~~], a person, association of persons, corporation, or
16 water improvement or irrigation district supplying stored or conserved water under
17 contract as provided in this chapter may use the bank and bed of any flowing natural
18 stream in the state to convey the water from the place of storage to the place of use or
19 to the diversion plant of the appropriator. The board [~~commission~~] shall prescribe rules
20 for this purpose.

21 SECTION 14. Section 11.084, Water Code, is amended as follows:

22 Sec. 11.084. SALE OF PERMANENT WATER RIGHT WITHOUT A PERMIT.

23 (a) No person may sell or offer to sell a permanent water right unless he has
24 perfected a right to appropriate state water by a certified filing, or unless he has obtained
25 a permit from the board [~~commission~~], authorizing the use of the water for the purposes

1 for which the permanent water right is conveyed.

2 (b) A person who violates Subsection (a) of this section is guilty of a
3 misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more
4 than \$1,000 or by confinement in the county jail for not more than one year or by both.

5 SECTION 15. Section 11.085, Water Code, is amended as follows:

6 Sec. 11.085. INTERWATERSHED TRANSFERS. (a) No person may take or
7 divert any of the water of the ordinary flow, underflow, or storm flow of any stream,
8 watercourse, or watershed in this state into any other natural stream, watercourse, or
9 watershed to the prejudice of any person or property situated within the watershed from
10 which the water is proposed to be taken or diverted.

11 (b) No person may transfer water from one watershed to another without first
12 applying for and receiving a permit from the board [~~commission~~] to do so. Before issuing
13 such a permit, the board [~~commission~~] shall hold a hearing to determine the rights that
14 might be affected by the transfer. The board [~~commission~~] shall give notice and hold
15 the hearing in the manner prescribed by its procedural rules.

16 (c) A person who takes or diverts water in violation of this section is guilty of
17 a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor
18 more than \$500 or by confinement in the county jail for not more than six months.

19 (d) A person commits a separate offense each day he continues to take or divert
20 water in violation of this section.

21 SECTION 16. Section 11.087, Water Code, is amended as follows:

22 Sec. 11.087. DIVERSION OF WATER ON INTERNATIONAL STREAM. (a)
23 When storm water or floodwater is released from a dam or reservoir on an international
24 stream and the water is designated for use or storage downstream by a specified user who
25 is legally entitled to receive it, no other person may store, divert, appropriate, or use the

1 water or interfere with its passage downstream.

2 (b) The board [~~commission~~] may make and enforce rules and orders to implement
3 the provisions of this section, including rules and orders designed to:

4 (1) establish an orderly system for water releases and diversions in order
5 to protect vested rights and to avoid the loss of released water;

6 (2) prescribe the time that releases of water may begin and end;

7 (3) determine the proportionate quantities of the released water in transit
8 and the water that would have been flowing in the stream without the addition of the
9 released water;

10 (4) require each owner or operator of a dam or reservoir on the stream
11 between the point of release and the point of destination to allow free passage of the
12 released water in transit; and

13 (5) establish other requirements the board [~~commission~~] considers
14 necessary to effectuate the purposes of this section.

15 (c) Orders made by the board [~~commission~~] to effectuate its rules under this
16 section need not be published, but the board [~~commission~~] shall transmit a copy of every
17 such order by certified mail to each diverter of water and to each reservoir owner on the
18 stream between the point of release and the point of destination of the released water as
19 shown by the records of the board [~~commission~~].

20 (d) A person who violates any provision of this section is guilty of a
21 misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by
22 confinement in the county jail for not more than six months or by both. A person
23 commits a separate offense each day he continues to violate this section.

24 SECTION 17. Section 11.0871, Water Code, is amended as follows:

25 Sec. 11.0871. TEMPORARY DIVERSION OF WATER ON INTERNATIONAL

1 STREAM. (a) The board [~~commission~~] may authorize, under conditions stated in an
2 order, a watermaster to provide for the temporary diversion and use by holders of water
3 rights of storm water or floodwater that spills from dams and reservoirs on an
4 international stream and otherwise would flow into the Gulf of Mexico without
5 opportunity for beneficial use.

6 (b) In an order made by the board [~~commission~~] under this section, the board
7 [~~commission~~] may not discriminate between holders of water rights from an international
8 stream except to the extent necessary to protect the holders of water rights from the same
9 source of supply.

10 (c) The board [~~commission~~] shall give notice by mail to holders of water rights
11 from an international stream and shall hold an evidentiary hearing before entry of an
12 order under this section.

13 SECTION 18. Section 11.093, Water Code, is amended as follows:

14 Sec. 11.093. ABATEMENT OF WASTE AS PUBLIC NUISANCE. (a) A
15 person who permits an unreasonable loss of water through faulty design or negligent
16 operation of any waterworks using water for a purpose named in this chapter commits
17 waste, and the board [~~commission~~] may declare the works causing the waste to be a
18 public nuisance. The board [~~commission~~] may take the necessary action to abate the
19 nuisance. Also, any person who may be injured by the waste may sue in the district court
20 having jurisdiction over the works causing the waste to have the operation of the works
21 abated as a public nuisance.

22 (b) In case of a wasteful use of water defined by Section 11.092 of this code, the
23 board [~~commission~~] shall declare the use to be a public nuisance and shall act to abate
24 the nuisance by directing the person supplying the water to close the water gates of the
25 person wasting the water and to keep them closed until the board [~~commission~~]

1 determines that the unlawful use of water is corrected.

2 SECTION 19. Section 11.097, Water Code, is amended as follows:

3 Sec. 11.097. REMOVAL OF OBSTRUCTIONS FROM NAVIGABLE
4 STREAMS. (a) On its own motion or on written request from a commissioners court,
5 the board [~~commission~~] shall investigate a reported natural obstruction in a navigable
6 stream caused by the accumulation of limbs, logs, leaves, other tree parts, or other debris.
7 If making the investigation on request of a commissioners court, the board [~~commission~~]
8 must make its investigation not later than the 30th day after the date on which it receives
9 the written request from the commissioners court.

10 (b) On completion of the investigation, if the board [~~commission~~] determines that
11 the obstruction is creating a hazard or is having other detrimental effect on the navigable
12 stream, the board [~~commission~~] shall initiate action to remove the obstruction.

13 (c) In removing an obstruction, the board [~~commission~~] may solicit the assistance
14 of federal and state agencies including the Corps of Engineers, Texas National Guard, the
15 Parks and Wildlife Department, and districts and authorities created under Article III,
16 Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution. Also,
17 the board [~~commission~~] may enter into contracts for services required to remove an
18 obstruction. However, no river authority may require the removal, relocation, or
19 reconfiguration of a floating structure which was in place before the effective date of this
20 Act and the effective date of any ordinance, rule, resolution, or other act of the river
21 authority mandating such action unless the board [~~commission~~] determines the structure
22 is an obstruction to navigation.

23 SECTION 20. Section 11.121, Water Code, is amended as follows:

24 Sec. 11.121. PERMIT REQUIRED

25 Except as provided in Sections 11.142 and 11.1421 of this code, no person may

1 appropriate any state water or begin construction of any work designed for the storage,
2 taking, or diversion of water without first obtaining a permit from the board [~~commission~~]
3 to make the appropriation.

4 SECTION 21. Section 11.122, Water Code, is amended as follows:

5 Sec. 11.122. AMENDMENTS TO WATER RIGHTS REQUIRED. (a) All
6 holders of permits, certified filings, and certificates of adjudication issued under Section
7 11.323 of this code shall obtain from the board [~~commission~~] authority to change the
8 place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated,
9 or otherwise alter a water right.

10 (b) The board [~~commission~~] shall adopt rules to effectuate the provisions of this
11 section.

12 SECTION 21. Section 11.123, Water Code, is amended as follows:

13 Sec. 11.123. PERMIT PREFERENCES. The board [~~commission~~] shall give
14 preference to applications in the order declared in Section 11.024 of this code and to
15 applications which will effectuate the maximum utilization of water and are calculated to
16 prevent the escape of water without contribution to a beneficial public service.

17 SECTION 22. Section 11.126, Water Code, is amended as follows:

18 Sec. 11.126. COMMISSION REQUIREMENTS. (a) If the proposed taking or
19 diversion of water for irrigation exceeds nine cubic feet per second, the executive
20 administrator [~~director~~] may require additional information as prescribed by this section.

21 (b) The executive administrator [~~director~~] may require a continuous longitudinal
22 profile, cross sections of the proposed channel, and the detail plans of any proposed
23 structure, on any scales and with any definition the executive administrator [~~director~~]
24 considers necessary or expedient.

25 (c) If the application proposes construction of a dam greater than six feet in

1 height either for diversion or storage, the executive administrator ~~[director]~~ may also
2 require filing a copy of all plans and specifications and a copy of the engineer's field
3 notes of any survey of the lake or reservoir. No work on the project shall proceed until
4 approval of the plans is obtained from the executive administrator ~~[director]~~.

5 (d) If the applicant is a corporation, the board ~~[commission]~~ may require filing
6 a certified copy of its articles of incorporation, a statement of the names and addresses
7 of its directors and officers, and a statement of the amount of its authorized capital stock
8 and its paid-up capital stock.

9 (e) If the applicant is not a corporation, the board ~~[commission]~~ may require filing
10 a sworn statement showing the name and address of each person interested in the
11 appropriation, the extent of his interest, and his financial condition.

12 SECTION 23. Section 11.127, Water Code, is amended as follows:

13 Sec. 11.127. ADDITIONAL REQUIREMENTS: DRAINAGE PLANS.

14 If the board ~~[commission]~~ believes that the efficient operation of any existing or
15 proposed irrigation system may be adversely affected by lack of adequate drainage
16 facilities incident to the work proposed to be done by an applicant, the board
17 ~~[commission]~~ may require the applicant to submit to the executive administrator ~~[director]~~
18 for approval plans for drainage adequate to guard against any injury which the proposed
19 work may entail.

20 SECTION 24. Section 11.1271, Water Code, is amended as follows:

21 Sec. 11.1271. ADDITIONAL REQUIREMENTS: WATER CONSERVATION
22 PLANS. The board ~~[commission]~~ may require the formulation and submission of a water
23 conservation plan and the adoption of reasonable water conservation measures, as defined
24 by Subdivision (8)(B), Section 11.002, of this code.

25 SECTION 25. Section 11.128, Water Code, is amended as follows:

1 Sec. 11.128. PAYMENT OF FEE.

2 If the applicant is not exempted from payment of the filing fee under Section
3 12.112 of this code, he shall pay the filing fee prescribed by Section 12.111(b) of this
4 code at the time he files the application. The board [~~commission~~] shall not record, file,
5 or consider the application until the executive administrator [~~director~~] certifies to the
6 board [~~commission~~] that the fee is paid.

7 SECTION 26. Section 11.130, Water Code, is amended as follows:

8 Sec. 11.130. RECORDING APPLICATIONS (a) The executive administrator
9 [~~director~~] shall have all applications for appropriations recorded in a well-bound book
10 kept for that purpose in the board [~~commission~~] office.

11 (b) The executive administrator [~~director~~] shall have the applications indexed
12 alphabetically in the name of:

13 (1) the applicant;

14 (2) the stream or source from which the appropriation is sought to be
15 made; and

16 (3) the county in which the appropriation is sought to be made.

17 SECTION . Section 11.131, Water Code, is amended as follows:

18 Sec. 11.131. EXAMINATION AND DENIAL OF APPLICATION WITHOUT
19 HEARING. (a) The board [~~commission~~] shall make a preliminary examination of the
20 application, and if it appears that there is no unappropriated water in the source of supply
21 or that the proposed appropriation should not be allowed for other reasons, the board
22 [~~commission~~] may deny the application.

23 (b) If the board [~~commission~~] denies the application under this section and the
24 applicant elects not to proceed further, the board [~~commission~~] may order any part of the
25 fee submitted with the application returned to the applicant.

1 SECTION 27. Section 11.132, Water Code, is amended as follows:

2 Sec. 11.132. NOTICE. (a) Notice shall be given to the persons who in the
3 judgment of the board [~~commission~~] may be affected by an application, including those
4 persons listed in Subdivision (2), Subsection (d), of this section. The board [~~commission~~],
5 on the motion of a board member [~~commissioner~~] or on the request of the executive
6 administrator [~~director~~] or any affected person, shall hold a public hearing on the
7 application.

8 (b) If the proposed use is for irrigation, the board [~~commission~~] shall include in
9 the notice a general description of the location and area of the land to be irrigated.

10 (c) In the notice, the board [~~commission~~] shall:

- 11 (1) state the name and address of the applicant;
- 12 (2) state the date the application was filed;
- 13 (3) state the purpose and extent of the proposed appropriation of water;
- 14 (4) identify the source of supply and the place where the water is to be
15 stored or taken or diverted from the source of supply;
- 16 (5) specify the time and location where the board [~~commission~~] will
17 consider the application; and
- 18 (6) give any additional information the board [~~commission~~] considers
19 necessary.

20 (d) The board [~~commission~~] may act on the application without holding a public
21 hearing if:

- 22 (1) not less than 30 days before the date of action on the application by
23 the board [~~commission~~], the applicant has published the board's [~~commission's~~] notice
24 of the application at least once in a newspaper regularly published or circulated within
25 the section of the state where the source of water is located;

1 (2) not less than 30 days before the date of action on the application by
2 the board [~~commission~~], the board [~~commission~~] mails a copy of the notice by first-class
3 mail, postage prepaid, to:

4 (A) each claimant or appropriator of water from the source of water
5 supply, the record of whose claim or appropriation has been filed with the board
6 [~~commission~~]; and

7 (B) all navigation districts within the river basin concerned; and

8 (3) within 30 days after the date of the newspaper publication of the
9 board's [~~commission's~~] notice, a public hearing has not been requested in writing by a
10 board member [~~commissioner~~], the executive administrator [~~director~~], or an affected
11 person who objects to the application.

12 (e) The inadvertent failure of the board [~~commission~~] to mail a notice under
13 Subdivision (2), Subsection (d), of this section to a navigation district that is not a
14 claimant or appropriator of water does not prevent the board's [~~commission's~~]
15 consideration of the application.

16 (f) If, on the date specified in the notice prescribed by Subsection (c) of this
17 section, the board [~~commission~~] determines that a public hearing must be held, the matter
18 shall be remanded for hearing without the necessity of issuing further notice other than
19 advising all parties of the time and place where the hearing is to convene.

20 SECTION 28. Section 11.134, Water Code, is amended as follows:

21 Sec. 11.134. ACTION ON APPLICATION. (a) After the hearing, the board
22 [~~commission~~] shall make a written decision granting or denying the application. The
23 application may be granted or denied in whole or in part.

24 (b) The board [~~commission~~] shall grant the application only if:

25 (1) the application conforms to the requirements prescribed by this chapter

1 and is accompanied by the prescribed fee;

2 (2) unappropriated water is available in the source of supply;

3 (3) the proposed appropriation:

4 (A) contemplates the application of water to any beneficial use;

5 (B) does not impair existing water rights or vested riparian rights;

6 and

7 (C) is not detrimental to the public welfare; and

8 (4) the applicant has provided evidence that reasonable diligence will be
9 used to avoid waste and achieve water conservation as defined by Subdivision (8)(B),
10 Section 11.002, of this code.

11 SECTION 29. Section 11.135, Water Code, is amended as follows:

12 Sec. 11.135. ISSUANCE OF PERMIT. (a) On approval of an application, the
13 board [~~commission~~] shall issue a permit to the applicant. The applicant's right to take
14 and use water is limited to the extent and purposes stated in the permit.

15 (b) The permit shall be in writing and attested by the seal of the board
16 [~~commission~~], and it shall contain substantially the following information:

17 (1) the name of the person to whom the permit is issued;

18 (2) the date the permit is issued;

19 (3) the date the original application was filed;

20 (4) the use or purpose for which the appropriation is to be made;

21 (5) the amount or volume of water authorized to be appropriated for each
22 purpose;

23 (6) a general description of the source of supply from which the
24 appropriation is proposed to be made;

25 (7) the time within which construction or work must begin and the time

1 within which it must be completed; and

2 (8) any other information the board [~~commission~~] prescribes.

3 (c) If the appropriation is for irrigation, the board [~~commission~~] shall also place
4 in the permit a description and statement of the approximate area of the land to be
5 irrigated.

6 SECTION 30. Section 11.1351, Water Code, is amended as follows:

7 Sec. 11.1351. PERMIT RESTRICTIONS.

8 In granting an application, the board [~~commission~~] may direct that stream flow
9 restrictions and other conditions and restrictions be placed in the permit being issued to
10 protect the priority of senior water rights.

11 SECTION 31. Section 11.136, Water Code, is amended as follows:

12 Sec. 11.136. RECORDING OF PERMIT. (a) The board [~~commission~~] shall
13 transmit the permit by registered mail to the county clerk of the county in which the
14 appropriation is to be made.

15 (b) When the county clerk receives the permit and is paid the recording fee (as
16 prescribed by Subchapter B, Chapter 118, Local Government Code, he shall file and
17 record the permit in a well-bound book kept for that purpose. He shall index the permit
18 alphabetically in the name of the applicant and of the stream or source of water supply.
19 After he has recorded the permit, the county clerk shall deliver the permit, on demand,
20 to the applicant.

21 (c) When the permit is filed in the office of the county clerk, it is constructive
22 notice of:

23 (1) the filing of the application;

24 (2) the issuance of the permit; and

25 (3) all the rights arising under the filing of the application and the issuance

1 of the permit.

2 SECTION 32. Section 11.137, Water Code, is amended as follows:

3 Sec. 11.137. SEASONAL PERMITS. (a) The board [~~commission~~] may issue
4 seasonal permits in the same manner that it issues regular permits. The provisions of this
5 chapter governing issuance of regular permits apply to issuance of seasonal permits.

6 (b) The right to take, use, or divert water under seasonal permit is limited to the
7 portion or portions of the calendar year stated in the permit.

8 (c) In a seasonal permit, the board [~~commission~~] shall specify the conditions
9 necessary to fully protect prior appropriations or vested rights on the stream.

10 SECTION 33. Section 11.138, Water Code, is amended as follows:

11 Sec. 11.138. TEMPORARY PERMITS. (a) The board [~~commission~~] may issue
12 temporary permits for beneficial purposes to the extent that they do not interfere with or
13 adversely affect prior appropriations or vested rights on the stream from which water is
14 to be diverted under such temporary permit. The board [~~commission~~] may, by appropriate
15 order, authorize any member of the board [~~commission~~] to approve and issue temporary
16 permits without notice and hearing if it appears to such issuing party that sufficient water
17 is available at the proposed point of diversion to satisfy the requirements of the temporary
18 permit as well as all existing rights. No temporary permit issued without notice and
19 hearing shall authorize more than 10 acre-feet of water, nor may it be for a term in excess
20 of one year.

21 (b) The board [~~commission~~] may prescribe rules governing notice and procedure
22 for the issuance of temporary permits.

23 (c) As between temporary permits, the one applied for first has priority.

24 (d) The board [~~commission~~] may not issue a temporary permit for a period
25 exceeding three calendar years.

1 (e) A temporary permit does not vest in its holder a permanent right to the use
2 of water.

3 (f) A temporary permit expires and shall be cancelled by the board [~~commission~~]
4 in accordance with the terms of the permit.

5 (g) The board [~~commission~~] may prescribe by rule the fees to be paid for issuance
6 of temporary permits, but no fee for issuance or extension of a temporary permit shall
7 exceed \$500.

8 SECTION 34. Section 11.1381, Water Code, is amended as follows:

9 Sec. 11.1381. TERM PERMITS (a) Until a water right is perfected to the full
10 extent provided by Section 11.026 of this code, the board [~~commission~~] may issue permits
11 for a term of years for use of state water to which a senior water right has not been
12 perfected.

13 (b) The board [~~commission~~] shall refuse to grant an application for a permit under
14 this section if the board [~~commission~~] finds that there is a substantial likelihood that the
15 issuance of the permit will jeopardize financial commitments made for water projects that
16 have been built or that are being built to optimally develop the water resources of the
17 area.

18 (c) The board [~~commission~~] shall refuse to grant an application for a term permit
19 if the holder of the senior appropriative water right can demonstrate that the issuance of
20 the term permit would prohibit the senior appropriative water right holder from
21 beneficially using the senior rights during the term of the term permit. Such
22 demonstration will be made using reasonable projections based on accepted methods.

23 (d) A permit issued under this section is subordinate to any senior appropriative
24 water rights.

25 SECTION 35. Section 11.139, Water Code, is amended as follows:

1 Sec. 11.139. EMERGENCY PERMITS. (a) The board [~~commission~~] may grant
2 an emergency permit for the diversion and use of water for a period of not more than 30
3 days if it finds that emergency conditions exist which threaten the public health, safety,
4 and welfare and which override the necessity to comply with established statutory
5 procedures.

6 (b) An emergency permit may be granted for a period of not more than 30 days,
7 and no extension or additional emergency permit may be granted at the expiration of the
8 original permit.

9 (c) An emergency permit may be granted under this section without the necessity
10 to comply with statutory and other procedures required for granting other permits issued
11 by the board [~~commission~~].

12 (d) The board [~~commission~~] may prescribe rules and adopt fees which are
13 necessary to carry out the provisions of this section.

14 (e) An emergency permit does not vest in the permittee any right to the diversion
15 and use of water and shall expire and be cancelled in accordance with its terms.

16 SECTION 36. Section 11.140, Water Code, is amended as follows:

17 Sec. 11.140. PERMITS FOR STORAGE FOR PROJECT DEVELOPMENT.

18 The board [~~commission~~] may issue permits for storage solely for the purpose of
19 optimum development of projects. The board [~~commission~~] may convert these permits
20 to permits for beneficial use if application to have them converted is made to the board
21 [~~commission~~].

22 SECTION 37. Section 11.141, Water Code, is amended as follows:

23 Sec. 11.141. DATE OF PRIORITY.

24 When the board [~~commission~~] issues a permit, the priority of the appropriation of
25 water and the claimant's right to use the water date from the date of filing of the

1 application.

2 SECTION 38. Section 11.1421, Water Code, is amended as follows:

3 Sec. 11.1421. PERMIT EXEMPTION FOR MARICULTURE ACTIVITIES. (a)

4 In this section, "mariculture" means the propagation and rearing of aquatic species,
5 including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a
6 controlled environment using brackish or marine water.

7 (b) Without obtaining a permit and subject to the requirements and limitations
8 provided by Subsections (c) through (e) of this section, a person who is engaged in
9 mariculture operations on land may take for that purpose state water from the Gulf of
10 Mexico and adjacent bays and arms of the Gulf of Mexico in an amount appropriate to
11 those mariculture activities.

12 (c) Before a person first takes water under Subsection (b) of this section, the
13 person must give notice to the board [~~commission~~] of the proposed appropriation.

14 (d) Each appropriation of water made under Subsection (b) of this section shall
15 be reported to the board [~~commission~~] in the manner provided by the board's
16 [~~commission's~~] rules.

17 (e) After notice and hearing, if the board [~~commission~~] determines that as a result
18 of low freshwater inflows appropriation of water under Subsection (b) of this section
19 would interfere with natural productivity of bays and estuaries, the board [~~commission~~]
20 shall issue an order requiring interruption or reduction of the appropriation.

21 SECTION 38. Section 11.143, Water Code, is amended as follows:

22 Sec. 11.143. DOMESTIC AND LIVESTOCK RESERVOIR - USE FOR OTHER
23 PURPOSES. (a) The owner of a dam or reservoir exempted under Section 11.142 of this
24 code who desires to use water from the dam or reservoir for purposes other than domestic
25 or livestock use shall obtain a permit to do so. He may obtain a regular permit, a

1 seasonal permit, or a permit for a term of years. He may elect to obtain the permit by
2 proceeding under this section or under the other provisions of this chapter governing
3 issuance of permits.

4 (b) If the applicant elects to proceed under this section, he shall submit to the
5 board [~~commission~~] a sworn application, on a form furnished by the board [~~commission~~],
6 containing the following information:

7 (1) the name and post-office address of the applicant;

8 (2) the nature and purpose of the use and the amount of water to be used
9 annually for each purpose;

10 (3) the major watershed and the tributary (named or unnamed) on which
11 the dam or reservoir is located;

12 (4) the county in which the dam or reservoir is located;

13 (5) the approximate distance and direction from the county seat of the
14 county to the location of the dam or reservoir;

15 (6) the survey or the portion of the survey on which the dam or reservoir
16 is located and, to the best of the applicant's knowledge and belief, the distance and
17 direction of the midpoint of the dam or reservoir from a corner of the survey, which
18 information the executive administrator [~~director~~] may require to be marked on an aerial
19 photograph or map furnished by the board [~~commission~~];

20 (7) the approximate surface area, to the nearest acre, of the reservoir when
21 it is full and the average depth in feet when it is full; and

22 (8) the approximate number of square miles in the drainage area above the
23 dam or reservoir.

24 (c) If the permit is sought for irrigation, the application must also specify:

25 (1) the total number of irrigable acres in the area;

1 (2) the number of acres to be irrigated within the area in any one year;
2 and

3 (3) the approximate distance and direction of the land to be irrigated from
4 the midpoint of the dam or reservoir.

5 (d) Except as otherwise specifically provided by this subsection, before the board
6 [~~commission~~] may approve the application and issue the permit, it shall give notice and
7 hold a hearing as prescribed by this section. The board [~~commission~~] may act on the
8 application without holding a public hearing if:

9 (1) not less than 30 days before the date of action on the application by
10 the board [~~commission~~], the applicant has published the board's [~~commission's~~] notice
11 of the application at least once in a newspaper regularly published or circulated within
12 the section of the state where the source of water is located;

13 (2) not less than 30 days before the date of action on the application by
14 the board [~~commission~~], the board [~~commission~~] mails a copy of the notice by first-class
15 mail, postage prepaid, to each person whose claim or appropriation has been filed with
16 the board [~~commission~~] and whose diversion point is downstream from that described in
17 the application; and

18 (3) within 30 days after the date of the newspaper publication of the
19 board's [~~commission's~~] notice, a public hearing is not requested in writing by a board
20 member [~~commissioner~~], the executive administrator [~~director~~], or an affected person who
21 objects to the application.

22 (e) In the notice, the board [~~commission~~] shall:

23 (1) state the name and post-office address of the applicant;

24 (2) state the date the application was filed;

25 (3) state the purpose and extent of the proposed appropriation of water;

1 (4) identify the source of supply and the place where the water is stored;
2 and

3 (5) specify the time and place of the hearing.

4 (f) The notice shall be published only once, at least 20 days before the date stated
5 in the notice for the hearing on the application, in a newspaper having general circulation
6 in the county where the dam or reservoir is located. At least 15 days before the date set
7 for the hearing, the board [~~commission~~] shall transmit a copy of the notice by first-class
8 mail to each person whose claim or appropriation has been filed with the board
9 [~~commission~~] and whose diversion point is downstream from that described in the
10 application.

11 (g) If on the date specified in the notice prescribed by Subsection (d) of this
12 section, the board [~~commission~~] determines that a public hearing must be held, the matter
13 shall be remanded for hearing without the necessity of issuing further notice other than
14 advising all parties of the time and place where the hearing is to convene.

15 (h) The applicant shall pay the filing fee prescribed by Section 12.111 (b) of this
16 code at the time he files the application.

17 (i) The board [~~commission~~] shall approve the application and issue the permit as
18 applied for in whole or part if it determines that:

- 19 (1) there is unappropriated water in the source of supply;
20 (2) the applicant has met the requirements of this section;
21 (3) the water is to be used for a beneficial purpose;
22 (4) the proposed use is not detrimental to the public welfare or to the
23 welfare of the locality; and
24 (5) the proposed use will not impair existing water rights.

25 SECTION 39. Section 11.144, Water Code, is amended as follows:

1 Sec. 11.144. APPROVAL FOR ALTERATIONS.

2 All holders of permits and certified filings shall obtain the approval of the board
3 ~~[commission]~~ before making any alterations, enlargements, extensions, or other changes
4 to any reservoir, dam, main canal, or diversion work on which a permit has been granted
5 or certified filing recorded. A detailed statement and plans for alterations or changes shall
6 be filed with the board ~~[commission]~~ and approved by the executive administrator
7 ~~[director]~~ before the alterations or changes are made. This section does not apply to the
8 ordinary maintenance or emergency repair of the facility.

9 SECTION 40 Section 11.145, Water Code, is amended as follows:

10 Sec. 11.145. WHEN CONSTRUCTION MUST BEGIN. (a) If a permit is for
11 appropriation by direct diversion, construction of the proposed facilities shall begin within
12 the time fixed by the board ~~[commission]~~, which shall not exceed two years after the date
13 the permit is issued. The appropriator shall work diligently and continuously to the
14 completion of the construction. The board ~~[commission]~~ may, by entering an order of
15 record, extend the time for beginning construction. The board ~~[commission]~~ may
16 establish fees, not to exceed \$1,000, for extending the time to begin construction of the
17 proposed facilities.

18 (b) If the permit contemplates construction of a storage reservoir, construction
19 shall begin within the time fixed by the board ~~[commission]~~, not to exceed two years after
20 the date the permit is issued. The board ~~[commission]~~, by entering an order of record,
21 may extend the time for beginning construction. The board ~~[commission]~~ may fix fees,
22 not to exceed \$1,000, for extending the time to begin construction of reservoirs.

23 SECTION 41 Section 11.146, Water Code, is amended as follows:

24 Sec. 11.146. FORFEITURES AND CANCELLATION OF PERMIT FOR
25 INACTION. (a) If a permittee fails to begin construction within the time specified in

1 Section 11.145 of this code, he forfeits all rights to the permit, subject to notice and
2 hearing as prescribed by this section.

3 (b) After beginning construction if the appropriator fails to work diligently and
4 continuously to the completion of the work, the appropriation is subject to cancellation
5 in whole or part, subject to notice and hearing as prescribed by this section.

6 (c) If the board [~~commission~~] believes that an appropriation or permit should be
7 declared forfeited under this section or any other sections of this code, it should give the
8 appropriator or permittee 30 days notice and provide him with an opportunity to be heard.

9 (d) After the hearing, the board [~~commission~~] by entering an order of record may
10 cancel the appropriation in whole or part. The board [~~commission~~] shall immediately
11 transmit a certified copy of the cancellation order by certified mail to the county clerk of
12 the county in which the permit is recorded. The county clerk shall record the cancellation
13 order.

14 (e) Except as provided by Section 11.1381 of this code, if a permit has been
15 issued for the use of water, the water is not subject to a new appropriation until the
16 permit has been cancelled in whole or part as provided by this section.

17 (f) Except as provided by Subchapter E of this chapter, none of the provisions of
18 this code may be construed as intended to impair, cause, or authorize or may impair,
19 cause, or authorize the forfeiture of any rights acquired by any declaration of
20 appropriation or by any permit if the appropriator has begun or begins the work and
21 development contemplated by his declaration of appropriation or permit within the time
22 provided by the law under which the declaration of appropriation was made or the permit
23 was granted and has prosecuted or continues to prosecute it with all reasonable diligence
24 toward completion.

25 SECTION 47 Section 11.147, Water Code, is amended as follows:

1 Sec. 11.147. EFFECTS OF PERMIT ON BAYS AND ESTUARIES AND
2 INSTREAM USES. (a) In this section, "beneficial inflows" means a salinity, nutrient,
3 and sediment loading regime adequate to maintain an ecologically sound environment in
4 the receiving bay and estuary system that is necessary for the maintenance of productivity
5 of economically important and ecologically characteristic sport or commercial fish and
6 shellfish species and estuarine life upon which such fish and shellfish are dependent.

7 (b) In its consideration of an application for a permit to store, take, or divert
8 water, the board [~~commission~~] shall assess the effects, if any, of the issuance of the
9 permit on the bays and estuaries of Texas. For permits issued within an area that is 200
10 river miles of the coast, to commence from the mouth of the river thence inland, the
11 board [~~commission~~] shall include in the permit, to the extent practicable when considering
12 all public interests, those conditions considered necessary to maintain beneficial inflows
13 to any affected bay and estuary system.

14 (c) For the purposes of making a determination under Subsection (b) of this
15 section, the board [~~commission~~] shall consider among other factors:

16 (1) the need for periodic freshwater inflows to supply nutrients and modify
17 salinity to preserve the sound environment of the bay or estuary, using any available
18 information, including studies and plans specified in Section 11.1491 of this code and
19 other studies considered by the board [~~commission~~] to be reliable; together with existing
20 circumstances, natural or otherwise, that might prevent the conditions imposed from
21 producing benefits;

22 (2) the ecology and productivity of the affected bay and estuary system;

23 (3) the expected effects on the public welfare of not including in the
24 permit some or all of the conditions considered necessary to maintain the beneficial
25 inflows to the affected bay or estuary system;

1 (4) the quantity of water requested and the proposed use of water by the
2 applicant, as well as the needs of those who would be served by the applicant;

3 (5) the expected effects on the public welfare of the failure to issue all or
4 part of the permit being considered; and

5 (6) for purposes of this section, the declarations as to preferences for
6 competing uses of water as found in Sections 11.024 and 11.033, Water Code, as well
7 as the public policy statement in Section 1.003, Water Code.

8 (d) In its consideration of an application to store, take, or divert water, the board
9 [~~commission~~] shall consider the effect, if any, of the issuance of the permit on existing
10 instream uses and water quality of the stream or river to which the application applies.

11 (e) The board [~~commission~~] shall also consider the effect, if any, of the issuance
12 of the permit on fish and wildlife habitats.

13 (f) On receipt of an application for a permit to store, take, or divert water, the
14 board [~~commission~~] shall send a copy of the permit application and any subsequent
15 amendments to the Parks and Wildlife Department. At its option, the Parks and Wildlife
16 Department may be a party in hearings on applications for permits to store, take, or divert
17 water. In making a final decision on any application for a permit, the board [~~commission~~],
18 in addition to other information, evidence, and testimony presented, shall consider all
19 information, evidence, and testimony presented by the Parks and Wildlife Department.

20 (g) The failure of the Parks and Wildlife Department to appear as a party does
21 not relieve the board [~~commission~~] of the requirements of this section.

22 SECTION 43 Section 11.148, Water Code, is amended as follows:

23 Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS (a)
24 Permit conditions relating to the beneficial inflows to affected bays and estuaries and
25 instream uses may be suspended by the board [~~commission~~] if the board [~~commission~~]

1 finds that an emergency exists and cannot practically be resolved in other ways.

2 (b) Before the board [~~commission~~] suspends a permit under Subsection (a) of this
3 section, it must give written notice to the Parks and Wildlife Department of the proposed
4 suspension. The board [~~commission~~] shall give the Parks and Wildlife Department an
5 opportunity to submit comments on the proposed suspension within 72 hours from such
6 time and the board [~~commission~~] shall consider those comments before issuing its order
7 imposing the suspension.

8 (c) The board [~~commission~~] may suspend the permit without notice to any other
9 interested party other than the Parks and Wildlife Department as provided by Subsection
10 (b) of this section. However, all affected persons shall be notified immediately by
11 publication, and a hearing to determine whether the suspension should be continued shall
12 be held within 15 days of the date on which the order to suspend is issued.

13 SECTION 44 Section 11.1491, Water Code, is amended as follows:

14 Section 11.1491. EVALUATION OF BAYS AND ESTUARIES DATA (a) The
15 Parks and Wildlife Department and the board [~~commission~~] shall have joint responsibility
16 to review the studies prepared under Section 16.058 of this code, to determine inflow
17 conditions necessary for the bays and estuaries, and to provide information necessary for
18 water resources management. Each agency shall designate an employee to share equally
19 in the oversight of the program. Other responsibilities shall be divided between the Parks
20 and Wildlife Department and the board [~~commission~~] to maximize present in-house
21 capabilities of personnel and to minimize costs to the state. Each agency shall have
22 reasonable access to all information produced by the other agency. Publication of reports
23 completed under this section shall be submitted for comment to both the board
24 [~~commission~~] and the Parks and Wildlife Department.

25 (b) For purposes of guiding data collection and studies specified under Subsection

1 (a) of this section, an advisory council may be established by the executive director[s] of
2 the ~~[commission,]~~ Parks and Wildlife Department and the executive administrator of the
3 board ~~[Water Development Board]~~ for each principal bay and estuary. Each advisory
4 council shall be composed of representatives of the board ~~[commission]~~, Parks and
5 Wildlife Department, ~~[the Water Development Board,]~~ Texas Department of Health,
6 General Land Office, one representative of commercial fishing groups, one representative
7 of recreational fishing and hunting groups, one representative of conservation groups, and
8 representatives of conservation and reclamation districts or river authorities having
9 responsibilities and operations in river basins or watersheds contributing to the bay or
10 estuary. The advisory councils may develop recommendations to the executive director[s]
11 and executive administrator and to entities and organizations having operational
12 responsibilities or holding major water rights in the contributing watersheds regarding
13 alternative water management methods that may be used in maintaining the sound
14 environment of the bays and estuaries.

15 (c) The board may authorize the use of money from the research and planning
16 fund established by Chapter 15 of this code to accomplish the purposes of this section.
17 These funds shall be used by the board ~~[commission]~~ in cooperation with the Parks and
18 Wildlife Department for interagency contracts with cooperating agencies and universities,
19 and contracts with private sector establishments, as necessary, to accomplish the purposes
20 of this section.

21 SECTION ~~45~~ Section 11.150, Water Code, is amended as follows:

22 Sec. 11.150. EFFECTS OF PERMITS ON WATER QUALITY.

23 In consideration of an application for a permit under this subchapter, the board
24 ~~[commission]~~ and the Texas Water Commission or its successor agency shall have joint
25 responsibility to assess the effects, if any, of the issuance of the permit on water quality

1 in this state.

2 SECTION⁴⁶ Section 11.152, Water Code, is amended as follows:

3 Sec. 11.152. EFFECTS OF PERMITS ON FISH AND WILDLIFE HABITATS.

4 In its consideration of an application for a permit to store, take, or divert water in
5 excess of 5,000 acre feet per year, the board [~~commission~~] and the Texas Water
6 Commission or its successor agency shall have joint responsibility to assess the effects,
7 if any, on the issuance of the permit on fish and wildlife habitats and may require the
8 applicant to take reasonable actions to mitigate adverse impacts on such habitat. In
9 determining whether to require an applicant to mitigate adverse impacts on a habitat, the
10 board [~~commission~~] and the Texas Water Commission or its successor agency may
11 consider any net benefit to the habitat produced by the project. The board [~~commission~~]
12 and the Texas Water Commission or its successor agency shall offset against any
13 mitigation required by the U.S. Fish and Wildlife Service pursuant to 33 C.F.R. Sections
14 320-330 any mitigation authorized by this section.

15 SECTION⁴¹ Section 11.171, Water Code, is amended as follows:

16 Sec. 11.171. DEFINITIONS

17 As used in this subchapter:

18 (1) "Other interested person" means any person other than a record holder
19 who is interested in the permit or certified filing or any person whose direct interest
20 would be served by the cancellation of the permit or certified filing in whole or part.

21 (2) "Certified filing" means a declaration of appropriation or affidavit that
22 was filed with the State Board of Water Engineers under the provisions of Section 14,
23 Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

24 (3) "Certificate of adjudication" means a certificate issued by the board
25 [~~commission~~] under Section 11.323 of this code.

1 (4) "Permit" means an authorization by the board [~~commission~~] granting
2 a person the right to use water.

3 SECTION 48 Section 11.173, Water Code, is amended as follows:

4 Sec. 11.173. CANCELLATION IN WHOLE OR IN PART. (a) Except as
5 provided by Subsection (b) of this section, if all or part of the water authorized to be
6 appropriated under a permit, certified filing, or certificate of adjudication has not been put
7 to beneficial use at any time during the 10-year period immediately preceding the
8 cancellation proceedings authorized by this subchapter, then the permit, certified filing,
9 or certificate of adjudication is subject to cancellation in whole or in part, as provided by
10 this subchapter, to the extent of the 10 years nonuse.

11 (b) A permit, certified filing, or certificate of adjudication or a portion of a
12 permit, certified filing, or certificate of adjudication is exempt from cancellation under
13 Subsection (a) of this section:

14 (1) to the extent of the owner's participation in the Conservation Reserve
15 Program authorized by the Food Security Act, Pub. L. No. 99-198, Secs. 1231-1236, 99
16 Stat. 1354, 1509-1514 (1985 or a similar governmental program; or

17 (2) if any portion of the water authorized to be used pursuant to a permit,
18 certified filing, or certificate of adjudication has been used in accordance with a water
19 management plan approved by the board [~~commission~~].

20 SECTION 49 Section 11.174, Water Code, is amended as follows:

21 Sec. 11.174. BOARD [~~COMMISSION~~] MAY INITIATE PROCEEDINGS

22 When the board [~~commission~~] finds that its records do not show that some portion
23 of the water has been used during the past 10 years, the executive administrator [~~director~~]
24 may initiate proceedings, terminated by public hearing, to cancel the permit, certified
25 filing, or certificate of adjudication in whole or in part.

1 SECTION 50 Section 11.175, Water Code, is amended as follows:

2 Sec. 11.175. NOTICE (a) At least 45 days before the date of the hearing, the
3 board [~~commission~~] shall send notice of the hearing to the holder of the permit, certified
4 filing, or certificate of adjudication being considered for cancellation in whole or in part.
5 Notice shall be sent by certified mail, return receipt requested, to the last address shown
6 by the records of the board [~~commission~~]. The board [~~commission~~] shall also send notice
7 by regular mail to all other holders of permits, certified filings, certificates of
8 adjudication, and claims of unadjudicated water rights filed pursuant to Section 11.303
9 of this code in the same watershed.

10 (b) The board [~~commission~~] shall also have the notice of the hearing published
11 once a week for two consecutive weeks, at least 30 days before the date of the hearing,
12 in a newspaper published in each county in which diversion of water from the source of
13 supply was authorized or proposed to be made and in each county in which the water was
14 authorized or proposed to be used, as shown by the records of the board [~~commission~~].
15 If in any such county no newspaper is published, then the notice may be published in a
16 newspaper having general circulation in the county.

17 SECTION 51 Section 11.176, Water Code, is amended as follows:

18 Sec. 11.176. HEARING

19 The board [~~commission~~] shall hold a hearing and shall give the holder of the
20 permit, certified filing, or certificate of adjudication and other interested persons an
21 opportunity to be heard and to present evidence on any matter pertinent to the questions
22 at issue.

23 SECTION 52 Section 11.177, Water Code, is amended as follows:

24 Sec. 11.177. BOARD [~~COMMISSION~~] FINDING; ACTION (a) At the
25 conclusion of the hearing, the board [~~commission~~] shall cancel the permit, certified filing,

1 or certificate of adjudication in whole or in part to the extent that it finds that:

2 (1) the water or any portion of the water appropriated under the permit,
3 certified filing, or certificate of adjudication has not been put to an authorized beneficial
4 use during the 10-year period;

5 (2) the holder has not used reasonable diligence in applying the water or
6 the unused portion of the water to an authorized beneficial use; and

7 (3) the holder has not been justified in the nonuse or does not then have
8 a bona fide intention of putting the water or the unused portion of the water to an
9 authorized beneficial use within a reasonable time after the hearing.

10 (b) In determining what constitutes a justified nonuse and a reasonable time as
11 used in Subsection (a)(3) of this section, the board [~~commission~~] shall give consideration
12 to:

13 (1) the expenditures made or obligations incurred by the holder in
14 connection with the permit, certified filing, or certificate of adjudication;

15 (2) the purpose to which the water is to be applied;

16 (3) the priority of the purpose;

17 (4) the amount of time usually necessary to put water to a beneficial use
18 for the same purpose when diligently developed; and

19 (5) whether at all times during the 10-year period there was rainfall
20 adequate to enable the use of all or part of the water authorized to be appropriated under
21 the permit, certified filing, or certificate of adjudication.

22 SECTION 53 Section 11.183, Water Code, is amended as follows:

23 Sec. 11.183. RESERVOIR

24 If the holder of a permit, certified filing, or certificate of adjudication has facilities
25 for the storage of water in a reservoir, the board [~~commission~~] may allow him to retain

1 the impoundment to the extent of the conservation storage capacity of the reservoir for
2 domestic, livestock, or recreation purposes.

3 SECTION 54 Section 11.202, Water Code, is amended as follows:

4 Sec. 11.202. RIGHT TO DRILL ARTESIAN WELL (a) Except as provided by
5 this section, a person is entitled to drill an artesian well for domestic purposes or for
6 stock raising without complying with the general provisions of this code regulating the
7 use of water.

8 (b) The artesian well must be on that person's own land and must be properly and
9 securely cased.

10 (c) When water is reached containing mineral or other substances injurious to
11 vegetation or agriculture, the artesian well must be securely capped or its flow controlled
12 so as not to injure another person's land or properly plugged so as to prevent the water
13 from rising above the first impervious stratum below the surface of the ground.

14 (d) Except as provided by Subsection (e) of this section, after September 1, 1991,
15 and before January 1, 1994, a person may not drill and operate a free-flowing artesian
16 well in a sole or principal source aquifer as designated by 40 C.F.R., Part 149, pursuant
17 to Section 1424(e), Safe Drinking Water Act (42 U.S.C. 300h-3(e)) that will result in a
18 flow of more than 5,000 gallons per minute or that is within 1,000 feet of another well
19 if the combined flows would exceed 5,000 gallons per minute.

20 (e) The board [~~commission~~] may grant for a well an exemption from the
21 prohibition provided by Subsection (d) of this section for any beneficial use that does not
22 waste water. The board [~~commission~~] by rule may delegate the authority to grant
23 exemptions under this subsection to a local water district.

24 SECTION 55 Section 11.203, Water Code, is amended as follows:

25 Sec. 11.203. ARTESIAN WELL: DRILLING RECORD (a) A person who

1 drills an artesian well or has one drilled shall keep a complete and accurate record of the
2 depth, thickness, and character of the different strata penetrated and when the well is
3 completed shall transmit a copy of the record to the board [~~commission~~] by registered
4 mail.

5 (b) A person who violates any provision of this section is guilty of a
6 misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more
7 than \$100.

8 SECTION ~~56~~ Section 11.204, Water Code, is amended as follows:

9 Sec. 11.204. REPORT OF NEW ARTESIAN WELL

10 Within one year after an artesian well is drilled, the owner or operator shall
11 transmit to the board [~~commission~~] a sworn report stating the result of the drilling
12 operation, the use to which the water will be applied, and the contemplated extent of the
13 use.

14 SECTION ~~61~~ Section 11.207, Water Code, is amended as follows:

15 Sec. 11.207. ANNUAL REPORT (a) Not later than March 1 of each year, a
16 person who during any part of the preceding calendar year owned or operated an artesian
17 well for any purpose other than domestic use shall file a report to the board [~~commission~~]
18 on a form supplied by the board [~~commission~~].

19 (b) The report shall state:

- 20 (1) the quantity of water which was obtained from the well;
21 (2) the nature of the uses to which the water was applied;
22 (3) the change in the level of the well's water table; and
23 (4) other information required by the board [~~commission~~].

24 (c) If water from the well was used for irrigation, the report shall also state the
25 acreage and yield of each crop irrigated.

1 SECTION 58 Section 11.302, Water Code, is amended as follows:

2 Sec. 11.302. DECLARATION OF POLICY.

3 The conservation and best utilization of the water resources of this state are a
4 public necessity, and it is in the interest of the people of the state to require recordation
5 with the board [~~commission~~] of claims water rights which are presently unrecorded, to
6 limit the exercise of these claims to actual use, and to provide for the adjudication and
7 administration of water rights to the end that the surface-water resources of the state may
8 be put to their greatest beneficial use. Therefore, this subchapter is in furtherance of the
9 public rights, duties, and functions mentioned in this section and in response to the
10 mandate expressed in Article XVI, Section 59 of the Texas Constitution and is in the
11 exercise of the police powers of the state in the interest of the public welfare.

12 SECTION 59 Section 11.303, Water Code, is amended as follows:

13 Sec. 11.303. RECORDATION AND LIMITATION OF CERTAIN WATER
14 RIGHTS CLAIMS (a) This section applies to:

- 15 (1) claims of riparian water rights;
- 16 (2) claims under Section 11.143 of this code to impound, divert, or use
17 state water for other than domestic or livestock purposes, for which no permit has been
18 issued;
- 19 (3) claims of water rights under the Irrigation Acts of 1889 and 1895
20 which were not filed with the State Board of Water Engineers in accordance with the
21 Irrigation Act of 1913, as amended; and
- 22 (4) other claims of water rights except claims under permits or certified
23 filings.

24 (b) Any claim to which this section applies shall be recognized only if valid
25 under existing law and only to the extent of the maximum actual application of water to

1 beneficial use without waste during any calendar year from 1963 to 1967, inclusive.
2 However, in any case where a claimant of a riparian right has prior to August 28, 1967,
3 commenced or completed the construction of works designed to apply a greater quantity
4 of water to beneficial use, the right shall be recognized to the extent of the maximum
5 amount of water actually applied to beneficial use without waste during any calendar year
6 from 1963 to 1970, inclusive.

7 (c) On or before September 1, 1969, every person claiming a water right to which
8 this section applies shall file with the board [~~commission~~] a statement setting forth:

- 9 (1) the name and address of the claimant;
10 (2) the location and nature of the right claimed;
11 (3) the stream or watercourse and the river basin in which the right is
12 claimed;
13 (4) the date of commencement of works
14 (5) the dates and volumes of use of water; and
15 (6) other information the board [~~commission~~] may require to show the
16 nature and extent of the claim.

17 (d) A person who files a statement as provided in this section shall certify under
18 oath that the statements made in support of his claim are true and correct to the best of
19 his knowledge and belief.

20 (e) A claimant who desires recognition of a right based on use from 1968 to
21 1970, inclusive, as provided in Subsection (b) of this section shall file an additional sworn
22 statement on or before July 1, 1971.

23 (f) The board [~~commission~~] shall prescribe forms for the sworn statements
24 required by this section, but use of the board [~~commission~~] forms is not mandatory.

25 (g) On or before January 1, 1968, and June 1, 1969, the board [~~commission~~] shall

1 cause notice of the requirements of this section to be published once each week for two
2 consecutive weeks in newspapers having general circulation in each county of the state
3 and by first-class mail to each user of surface water who has filed a report of water use
4 with the board [~~commission~~].

5 (h) On sworn petition, notice, and hearing as prescribed for applications for
6 permits and upon finding of extenuating circumstances and good cause shown for failure
7 to timely file, the board [~~commission~~] may authorize the filing of the sworn statement or
8 statements required by this section until entry of a preliminary determination of claims
9 of water rights in accordance with Section 11.309 of this code which includes the area
10 described in the petition or, if a preliminary determination has not been entered, until
11 September 1, 1974.

12 (i) Since the filing of all claims to use public water is necessary for the
13 conservation and best utilization of water resources of the state, failure to file a sworn
14 statement in substantial compliance with this section extinguishes and bars any claim of
15 water rights to which this section applies.

16 (j) A sworn statement submitted under this section is binding on the person
17 submitting it and his successors in interest, but is not binding on the board [~~commission~~]
18 or any other person in interest.

19 (k) Nothing in this section shall be construed to recognize any water right which
20 did not exist before August 28, 1967.

21 (l) This section does not apply to use of water for domestic or livestock purposes.

22 SECTION ~~(j)~~ Section 11.304, Water Code, is amended as follows:

23 Sec. 11.304. ADJUDICATION OF WATER RIGHTS

24 The water rights in any stream or segment of a stream may be adjudicated as
25 provided in this subchapter:

1 (1) on the board's [~~commission's~~] own motion;

2 (2) on petition to the board [~~commission~~] signed by 10 or more claimants
3 of water rights from the source of supply; or

4 (3) on petition of the executive administrator [~~director~~].

5 SECTION 61 Section 11.305, Water Code, is amended as follows:

6 Sec. 11.305. INVESTIGATION (a) Promptly after a petition is filed under
7 Section 11.304 of this Code, the board [~~commission~~] shall consider whether the
8 adjudication would be in the public interest. If the board [~~commission~~] finds that an
9 adjudication would be in the public interest, it shall enter an order to that effect,
10 designating the stream or segment to be adjudicated. The executive administrator
11 [~~director~~] shall have an investigation made of the area involved in order to gather relevant
12 data and information essential to the proper understanding of the claims of water rights
13 involved. The results of the investigation shall be reduced to writing and made a matter
14 of record in the board [~~commission~~] office.

15 (b) In connection with the investigation, the executive administrator [~~director~~]
16 shall have a map or plat made showing with substantial accuracy the course of the stream
17 or segment and the location of reservoirs, diversion works, and places of use, including
18 lands which are being irrigated or have facilities for irrigation.

19 SECTION 62 Section 11.306, Water Code, is amended as follows:

20 Sec. 11.306. NOTICE OF ADJUDICATION (a) The board [~~commission~~] shall
21 prepare a notice of adjudication which describes the stream or segment to be adjudicated
22 and the date by which all claims of water rights in the stream or segment shall be filed
23 with the board [~~commission~~]. The date shall not be less than 90 days after the date the
24 notice is issued.

25 (b) The notice shall be published once a week for two consecutive weeks in one

1 or more newspapers having general circulation in the counties in which the stream or
2 segment is located.

3 (c) The notice shall also be sent by first-class mail to each claimant of water
4 rights whose diversion is within the stream or segment to be adjudicated, to the extent
5 that the claimants can reasonably be ascertained from the records of the board
6 [~~commission~~].

7 SECTION ⁶³ Section 11.307, Water Code, is amended as follows:

8 Sec. 11.307. FILING OF SWORN CLAIMS. (a) Every person claiming a water
9 right of any nature, except for domestic or livestock purposes, from the stream or segment
10 under adjudication shall file a sworn claim with the board [~~commission~~] within the time
11 prescribed in the notice of adjudication including any extensions of the prescribed time,
12 setting forth:

- 13 (1) the name and post-office address of the claimant;
14 (2) the location and nature of the right claimed, including a description of
15 any permit or certified filing under which the claim is made;
16 (3) the purpose of the use;
17 (4) a description of works and irrigated land; and
18 (5) all other information necessary to show the nature and extent of the
19 claim.

20 (b) The board [~~commission~~] shall prescribe forms for claims, but use of the board
21 [~~commission~~] forms is not mandatory.

22 SECTION ⁶⁴ Section 11.308, Water Code, is amended as follows:

23 Sec. 11.308. HEARINGS ON CLAIMS; NOTICE

24 The board [~~commission~~] shall set a time and a place for hearing all claims. Not
25 less than 30 days before commencement of the hearings, the board [~~commission~~] shall

1 give notice of the hearings by certified mail to all persons who have filed claims in
2 accordance with Section 11.307 of this code, or this notice may be included in the notice
3 of adjudication provided in Section 11.306 of this code. The hearings shall be conducted
4 as provided in Section 11.337 of this code.

5 SECTION 65 Section 11.309, Water Code, is amended as follows:

6 Sec. 11.309. PRELIMINARY DETERMINATION OF CLAIMS. (a) On
7 completion of the hearings, the board [~~commission~~] shall make a preliminary
8 determination of the claims to water rights under adjudication.

9 (b) One copy of the preliminary determination shall be furnished without charge
10 to each person who filed a claim in accordance with Section 11.307 of this code.
11 Additional copies of the preliminary determination shall be made available for public
12 inspection at convenient locations throughout the river basin, as designated by the board
13 [~~commission~~]. Copies shall also be made available to other interested persons at a
14 reasonable price, based on the cost of reproduction.

15 SECTION 66 Section 11.310, Water Code, is amended as follows:

16 Sec. 11.310. EVIDENCE OPEN TO INSPECTION.

17 All evidence presented to or considered by the board [~~commission~~] shall be open
18 to public inspection for a period of not less than 60 days, as fixed by the board
19 [~~commission~~], after the notice prescribed in Section 11.312 of this code is issued.

20 SECTION 67 Section 11.311, Water Code, is amended as follows:

21 Sec. 11.311. DATE FOR FILING CONTESTS

22 The board [~~commission~~] shall set a date for filing contests on the preliminary
23 determination, which date shall not be less than 30 days after the period for public
24 inspection of the evidence has closed.

25 SECTION 68 Section 11.312, Water Code, is amended as follows:

1 Sec. 11.312. NOTICE OF PRELIMINARY DETERMINATION; COPIES (a)

2 Promptly after the preliminary determination is made as provided in Section 11.309 of
3 this code, the board [~~commission~~] shall publish notice of the determination once a week
4 for two consecutive weeks in one or more newspapers having general circulation in the
5 river basin in which the stream or segment that is the subject of the adjudication is
6 located.

7 (b) The board [~~commission~~] shall also send notice by first-class mail to each
8 claimant of water rights within the river basin in which the stream or segment is located,
9 to the extent that the claimants can be reasonably ascertained from the records of the
10 board [~~commission~~].

11 (c) Each notice shall state:

12 (1) the place and the period of time that the preliminary determination and
13 evidence presented to or considered by the board [~~commission~~] will be open for public
14 inspection;

15 (2) the locations throughout the river basin where copies of the
16 preliminary determination will be available for public inspection;

17 (3) the method of ordering copies of the preliminary determination and the
18 charge for copies;

19 (4) the date by which contests on the preliminary determination must be
20 filed.

21 SECTION 6⁶ Section 11.313, Water Code, is amended as follows:

22 Sec. 11.313. FILING CONTESTS (a) Any water right claimant affected by the
23 preliminary determination, including any claimant to water rights within the river basin
24 but outside the stream or segment under adjudication, who disputes the preliminary
25 determination may within the time for filing contests prescribed by the board

1 ~~[commission]~~ in the notice, including any extension of the time, file a written contest with
2 the board ~~[commission]~~, stating with reasonable certainty the grounds of his contest.

3 (b) The statement filed to contest a preliminary determination must be verified
4 by an affidavit of the contestant, his agent, or his attorney.

5 (c) If the contest is directed against the preliminary determination of the water
6 rights of other claimants, a copy shall be served on each of these claimants or his attorney
7 by certified mail, and proof of service shall be filed with the board ~~[commission]~~.

8 SECTION 11.314, Water Code, is amended as follows:

9 Sec. 11.314. HEARING ON CONTEST; NOTICE

10 After the time for filing contests has expired, the board ~~[commission]~~ shall prepare
11 a notice setting forth the part of the preliminary determination to which each contest is
12 directed and the time and place of a hearing on the contest. The notice shall be sent to
13 each claimant of water rights within the river basin in which the stream or segment is
14 located, to the extent that the claimants can be reasonably ascertained from the records
15 of the board ~~[commission]~~. The hearing shall be conducted as provided in Section 11.337
16 of this code.

17 SECTION 11.315, Water Code, is amended as follows:

18 Sec. 11.315. FINAL DETERMINATION

19 On completion of the hearings on all contests, the board ~~[commission]~~ shall make
20 a final determination of the claims to water rights under adjudication. The board
21 ~~[commission]~~ shall send a copy of the final determination and any modification of the
22 final determination to each claimant whose rights are adjudicated and to each contesting
23 party.

24 SECTION 11.316, Water Code, is amended as follows:

25 Sec. 11.316. APPLICATION FOR REHEARING

1 Within 30 days from the date of the final determination, any affected party may
2 apply to the board [~~commission~~] for a rehearing. Applications for rehearing which in the
3 opinion of the board [~~commission~~] are without merit may be denied without notice to
4 other parties, but no application for rehearing shall be granted without notice to each
5 claimant whose rights are adjudicated and to each contesting party.

6 SECTION ¹³ Section 11.317, Water Code, is amended as follows:

7 Sec. 11.317. FILING FINAL DETERMINATION WITH DISTRICT COURT

8 (a) As soon as practicable after the disposition of all applications for rehearing,
9 the board [~~commission~~] shall file a certified copy of the final determination, together with
10 all evidence presented to or considered by the board [~~commission~~], in a district court of
11 any county in which the stream or segment under adjudication is located. However, if
12 the stream or segment under adjudication includes all or parts of three or more counties
13 and if 10 or more affected persons who appeared in the proceedings petition the board
14 [~~commission~~] to do so, the board [~~commission~~] shall file the action in a convenient
15 district court of a judicial district which is not within the river basin of the stream or
16 segment under adjudication.

17 (b) The board [~~commission~~] shall obtain an order from the court fixing a time not
18 less than 30 days from the date of the order for the filing of exceptions to the final
19 determination and also fixing a time not less than 60 days from the date of the order for
20 commencement of hearings on exceptions.

21 (c) The board [~~commission~~] shall immediately give written notice of the court
22 order by certified mail to all parties who appeared in the proceedings before the board
23 [~~commission~~]. The board [~~commission~~] shall file proof of the service with the court.

24 SECTION ¹⁴ Section 11.318, Water Code, is amended as follows:

25 Sec. 11.318. EXCEPTIONS TO FINAL DETERMINATION. (a) Any affected

1 person who appeared in the proceeding before the board [~~commission~~] may file
2 exceptions to the final determination. An exception must state with a reasonable degree
3 of certainty the grounds for the exception and must specify the particular paragraphs and
4 pages of the determination to which the exception is taken.

5 (b) Three copies of the exceptions shall be filed in court and a copy shall be
6 served on the board [~~commission~~]. The board [~~commission~~] shall make copies of all
7 exceptions available at a reasonable price, based on the cost of reproduction.

8 SECTION ~~11~~¹² Section 11.319, Water Code, is amended as follows:

9 Sec. 11.319. HEARINGS ON EXCEPTIONS (a) The court shall hear any
10 exceptions that have been filed. The board [~~commission~~] and all affected persons who
11 appeared in the proceedings before the board [~~commission~~] are entitled to appear and be
12 heard on the exceptions. The court may permit other parties in interest to appear and be
13 heard for good cause shown.

14 (b) The court may conduct nonjury hearings and proceedings at any convenient
15 location within the state. Actual expenses incurred by the court outside its judicial district
16 shall be taxed as costs.

17 SECTION ~~11~~¹² Section 11.320, Water Code, is amended as follows:

18 Sec. 11.320. SCOPE OF JUDICIAL REVIEW. (a) In passing on exceptions, the
19 court shall determine all issues of law and fact independently of the board's
20 [~~commission's~~] determination. The substantial evidence rule shall not be used. The court
21 shall not consider any exception which was not brought to the board's [~~commission's~~]
22 attention by application for rehearing. The court shall not consider any issue of fact
23 raised by an exception unless the record of evidence before the board [~~commission~~]
24 reveals that the question was genuinely in issue before the board [~~commission~~].

25 (b) A party in interest may demand a jury trial of any issue of fact, but the court

1 may in its discretion have a separate trial with a separate jury of any such issue.

2 (c) The legislature declares that the provisions of this section are not severable
3 from the remainder of this subchapter and that this subchapter would not have been
4 passed without the inclusion of this section. If this section is for any reason held invalid,
5 unconstitutional, or inoperative in any way, the holding applies to the entire subchapter
6 so that the entire subchapter is null and void.

7 SECTION 11.321 Section 11.321, Water Code, is amended as follows:

8 Sec. 11.321. EVIDENCE

9 Any exception heard by the court without a jury may be resolved on the record
10 of evidence before the board [~~commission~~], or the court may take additional evidence or
11 direct that additional evidence be heard by the board [~~commission~~].

12 SECTION 11.322 Section 11.322, Water Code, is amended as follows:

13 Sec. 11.322. FINAL DECREE (a) After the final hearing, the court shall enter
14 a decree affirming or modifying the order of the board [~~commission~~].

15 (b) The court may assess the costs as it deems just.

16 (c) An appeal may be taken from the decree of the court in the same manner and
17 with the same effect as in other civil cases.

18 (d) The final decree in every water right adjudication is final and conclusive as
19 to all existing and prior rights and claims to the water rights in the adjudicated stream or
20 segment of a stream. The decree is binding on all claimants to water rights outside the
21 adjudicated stream or segment of a stream.

22 (e) Except for domestic and livestock purposes or rights subsequently acquired
23 by permit, a water right is not recognized in the adjudicated stream or segment of a
24 stream unless the right is included in the final decree of the court.

25 SECTION 11.323 Section 11.323, Water Code, is amended as follows:

1 Sec. 11.323. CERTIFICATE OF ADJUDICATION (a) When a final
2 determination of the rights to the waters of a stream has been made in accordance with
3 the procedure provided in this subchapter and the time for a rehearing has expired, the
4 board [~~commission~~] shall issue to each person adjudicated a water right a certificate of
5 adjudication, signed by the chairman of the board and bearing the seal of the board
6 [~~commission~~].

7 (b) In the certificate, the board [~~commission~~] shall include:

- 8 (1) a reference to the final decree;
- 9 (2) the name and post-office address of the holder of the adjudicated right;
- 10 (3) the priority, extent, and purpose of the adjudicated right and, if the
11 right is for irrigation, a description of the irrigated land; and
- 12 (4) all other information in the decree relating to the adjudicated right.

13 SECTION 90. Section 11.324, Water Code, is amended as follows:

14 Sec. 11.324. RECORDATION OF CERTIFICATE (a) The board [~~commission~~]
15 shall transmit the certificate of adjudication or a true copy to the county clerk of each
16 county in which the appropriation is made.

17 (b) On receipt of the recording fee from the holder of the certificate, the county
18 clerk shall file and record the certificate in a well-bound book provided and kept for that
19 purpose only. The clerk shall index the certificate alphabetically under the name of the
20 holder of the certificate of adjudication and under the name of the stream or source of
21 water supply.

22 (c) When a certificate of adjudication is filed and recorded as provided in this
23 section, the county clerk shall deliver the certificate on demand to the holder.

24 SECTION 91. Section 11.325, Water Code, is amended as follows:

25 Sec. 11.325. WATER DIVISIONS

1 The board [~~commission~~] shall divide the state into water divisions for the purpose
2 of administering adjudicated water rights. Water divisions may be created from time to
3 time as the necessity arises. The divisions shall be constituted to secure the best
4 protection to the holders of water rights and the most economical supervision on the part
5 of the state.

6 SECTION ~~8.2~~^{8.2} Section 11.326, Water Code, is amended as follows:

7 Sec. 11.326. APPOINTMENT OF WATERMASTER (a) The executive
8 administrator [~~director~~] may appoint one watermaster for each water division.

9 (b) A watermaster holds office until a successor is appointed. The executive
10 administrator [~~director~~] may remove a watermaster at any time.

11 (c) The executive administrator [~~director~~] may employ assistant watermasters and
12 other employees necessary to aid a watermaster in the discharge of his duties.

13 (d) In a water division in which the office of watermaster is vacant, the executive
14 administrator [~~director~~] has the powers of a watermaster.

15 (e) The executive administrator [~~director~~] shall supervise and generally direct the
16 watermaster in the performance of his duties. A watermaster is responsible to the
17 executive administrator [~~director~~] for the proper performance of his duties.

18 (f) A person dissatisfied with any action of a watermaster may apply to the
19 executive administrator [~~director~~] for relief.

20 SECTION ~~8.3~~^{8.3} Section 11.329, Water Code, is amended as follows:

21 Sec. 11.329. COMPENSATION AND EXPENSES OF WATERMASTER

22 (a) The board [~~commission~~] shall pay the compensation and necessary expenses
23 of a watermaster, assistant watermasters, and other necessary employees, but the holders
24 of water rights that have been determined or adjudicated and are to be administered by
25 the watermaster shall reimburse the board [~~commission~~] for the compensation and

1 expenses. Necessary expenses may include costs associated with streamflow measurement
2 and monitoring, water accounting, assessment billing and collection, and any other duties
3 a watermaster may be required to perform under this subchapter.

4 (b) After the adjudication decree becomes final, the executive administrator
5 [~~director~~] shall notify each holder of water rights under the decree of the amount of
6 compensation and expenses that will be required annually for the administration of the
7 water rights so determined.

8 (c) The board [~~commission~~] shall hold a public hearing to determine the
9 apportionment of the costs of administration of adjudicated water rights among the
10 holders of the rights. After a public hearing, the board [~~commission~~] shall issue an order
11 assessing the annual cost against the holders of water rights to whom the water will be
12 distributed under the final decree. The board [~~commission~~] shall equitably apportion the
13 costs. The executive administrator [~~director~~] may provide for payments in installments
14 and shall specify the dates by which payments shall be made to the board [~~commission~~].

15 (d) The executive administrator [~~director~~] shall transmit all collections under this
16 section to the State Treasurer.

17 (e) No water shall be diverted, taken, or stored by, or delivered to, any person
18 while he is delinquent in the payment of his assessed costs.

19 (f) An order of the board [~~commission~~] assessing costs remains in effect until the
20 board [~~commission~~] issues a further order. The board [~~commission~~] may modify, revoke,
21 or supersede an order assessing costs with a subsequent order. The board [~~commission~~]
22 may issue supplementary orders from time to time to apply to new diversions.

23 SECTION 11.330, Section 11.330, Water Code, is amended as follows:

24 Sec. 11.330. OUTLET FOR FREE PASSAGE OF WATER.

25 The owner of any works for the diversion or storage of water shall maintain a

1 substantial headgate at the point of diversion, or a gate on each discharge pipe of
2 pumping plant, constructed so that it can be locked at the proper place by the
3 watermaster, or a suitable outlet in a dam to allow the free passage of water that the
4 owner of the dam is not entitled to divert or impound. The board [~~commission~~] shall
5 adopt rules, and the executive administrator [~~director~~] shall enforce the rules, governing
6 the type and location of the headgates or gates and the outlets to allow the free passage
7 of water.

8 SECTION 6.5 Section 11.331, Water Code, is amended as follows:

9 Sec. 11.331. MEASURING DEVICES

10 The board [~~commission~~], by rule, may require the owner of any works for the
11 diversion, taking, storage, or distribution of water to construct and maintain suitable
12 measuring devices at points that will enable the watermaster to determine the quantities
13 of water to be diverted, taken, stored, released, or distributed in order to satisfy the rights
14 of the respective users.

15 SECTION 6.6 Section 11.332, Water Code, is amended as follows:

16 Sec. 11.332. INSTALLATION OF FLUMES

17 The board [~~commission~~], by rule, may require flumes to be installed along the line
18 of any ditch if necessary for the protection of water rights or other property.

19 SECTION 6.7 Section 11.333, Water Code, is amended as follows:

20 Sec. 11.333. FAILURE TO COMPLY WITH BOARD [~~COMMISSION~~] RULES

21 If the owner of waterworks using state water refuses or neglects to comply with
22 the rules adopted pursuant to Section 11.330, 11.331, or 11.332 of this code, the executive
23 administrator [~~director~~], after 10 days notice or after a period of additional time that is
24 reasonable under the circumstances, may direct the watermaster to make adjustments of
25 the control works to prevent the owner of the works from diverting, taking, storing, or

1 distributing any water until he has fully complied with the rules.

2 SECTION 40 Section 11.334, Water Code, is amended as follows:

3 Sec. 11.334. SUIT AGAINST BOARD [~~COMMISSION~~] FOR INJURY

4 Any person who is injured by an act of the board [~~commission~~] under this
5 subchapter may bring suit against the board [~~commission~~] to review the action or to
6 obtain an injunction. If the water right involved has been adjudicated as provided in this
7 subchapter, the court shall issue an injunction only if it is shown that the board
8 [~~commission~~] has failed to carry into effect the decree adjudicating the water right.

9 SECTION 41 Section 11.335, Water Code, is amended as follows:

10 Sec. 11.335. ADMINISTRATION OF WATER RIGHTS NO ADJUDICATED

11 (a) If any area in which water rights of record in the office of the board
12 [~~commission~~] have not been adjudicated, the claimants of the rights and the board
13 [~~commission~~] may enter into a written agreement for their administration.

14 (b) An agreement made under authority of this section shall provide:

15 (1) the basis and manner of distribution of the water to which the
16 agreement relates;

17 (2) the services of a special watermaster, and assistants if necessary, to
18 carry out the agreement; and

19 (3) the allocation, collection, and payment of the annual costs of
20 administration.

21 (c) An agreement to administer unadjudicated water rights shall be recorded in
22 the offices of the board [~~commission~~] and of the county clerk of each county in which
23 any of the works or lands affected by the agreement are located.

24 (d) The administration of water rights by agreement is governed by the provisions
25 of this subchapter except as regards allocation and payment of the expenses of the

1 administration.

2 (e) No agreement authorized by this section impairs any vested right to the use
3 of water or creates any additional rights to the use of water.

4 SECTION 11.336. Section 11.336, Water Code, is amended as follows:

5 Sec. 11.336. ADMINISTRATION OF PERMITS ISSUED AFTER
6 ADJUDICATION

7 Permits, other than temporary permits, that are issued by the board [~~commission~~]
8 to appropriate water from an adjudicated stream or segment are subject to administration
9 in the same manner as is provided in this subchapter for adjudicated water rights.

10 SECTION 11.337. Section 11.337, Water Code, is amended as follows:

11 Sec. 11.337. HEARINGS: NOTICE AND PROCEDURE (a) The board
12 [~~commission~~] shall give notice of a hearing or other proceeding it orders under this
13 subchapter in the manner prescribed in the procedural rules of the board [~~commission~~],
14 unless this subchapter specifically provides otherwise.

15 (b) In any proceeding in any part of the state, the board [~~commission~~] may:

- 16 (1) take evidence, including the testimony of witnesses;
17 (2) administer oaths;
18 (3) issue subpoenas and compel the attendance of witnesses in the same
19 manner as subpoenas are issued out of the courts of the state;
20 (4) compel witnesses to testify and give evidence; and
21 (5) order the taking of depositions and issue commissions for the taking
22 of depositions in the same manner as depositions are obtained in civil actions.

23 (c) Evidence may be taken by a duly appointed reporter before the board
24 [~~commission~~] or before an authorized representative who has the power to administer
25 oaths.

1 (d) If a person neglects or refuses to comply with an order or subpoena issued
2 by the board [~~commission~~] or refuses to testify on any matter about which he may be
3 lawfully interrogated, the board [~~commission~~] may apply to a district court of the county
4 in which the proceeding is held to punish him in the manner provided by law for such
5 disobedience in civil actions.

6 (e) The board [~~commission~~] may adjourn its proceedings from time to time and
7 from place to place.

8 (f) When a proceeding before the board [~~commission~~] is concluded, the board
9 [~~commission~~] shall render a decision as to the matters concerning which the proceeding
10 was held.

11 SECTION 91 Section 11.338, Water Code, is amended as follows:

12 Sec. 11.338. CANCELLATION OF WATER RIGHTS

13 Nothing in this subchapter recognizes any abandoned or cancelled water right or
14 impairs in any way the power of the board [~~commission~~] under general law to forfeit,
15 cancel, or find abandoned any water right, including adjudicated water rights.

16 SECTION 93 Section 11.340, Water Code, is amended as follows:

17 Sec. 11.340. ABATEMENT OF CERTAIN CIVIL SUITS (a) Nothing in this
18 subchapter prevents or precludes a person who claims the right to divert water from a
19 stream from filing and prosecuting to a conclusion a suit against other claimants of the
20 right to divert or use water from the same stream. However, if the board [~~commission~~]
21 has ordered a determination of water rights as provided in this subchapter or if the board
22 [~~commission~~] orders such a determination within 90 days after notice of the filing of a
23 suit, the suit shall be abated on the motion of the board [~~commission~~] or any party in
24 interest as to any issues involved in the water rights determination.

25 SECTION 94 The title of Subchapter I, Water Code, is amended as follows:

1 SUBCHAPTER I. BOARD [~~COMMISSION~~]-APPOINTED WATERMASTER

2 SECTION a Section 11.451, Water Code, is amended as follows:

3 Sec. 11.451. BOARD [~~COMMISSION~~] AUTHORITY

4 On petition of 25 or more holders of water rights in a river basin or segment of
5 a river basin or on its own motion the board [~~commission~~] may authorize the executive
6 administrator [~~director~~] to appoint a watermaster for a river basin or segment of a river
7 basin if the board [~~commission~~] finds that the rights of senior water rights holders in the
8 basin or segment of the basin are threatened.

9 SECTION b Section 11.452, Water Code, is amended as follows:

10 Sec. 11.452. PROCEDURE FOR DETERMINATION (a) On receiving a
11 petition for appointment of a watermaster or on its own motion, the board [~~commission~~]
12 shall call and hold a hearing to determine if a need exists for appointment of a
13 watermaster for the river basin or segment of the river basin.

14 (b) At the hearing persons who hold water rights in the river basin or segment
15 of the river basin may appear before the board [~~commission~~] and submit testimony and
16 evidence relating to the need for appointment of a watermaster.

17 (c) After the hearing, the board [~~commission~~] shall make a written determination
18 as to whether a threat exists to the rights of senior water rights holders in the river basin
19 or segment of the river basin and shall issue an order either finding that a threat exists
20 and directing appointment of a watermaster or denying appointment of a watermaster.

21 SECTION c Section 11.453, Water Code, is amended as follows:

22 Sec. 11.453. APPOINTMENT OF WATERMASTER (a) On issuance of an
23 order under Section 11.452 of this chapter directing appointment of a watermaster, the
24 executive administrator [~~director~~] shall appoint a watermaster for the river basin or
25 segment of the river basin covered by the board [~~commission~~] order.

1 (b) A person appointed as a watermaster under this section may not be:

2 (1) the holder of a water right in the river basin or segment of the river
3 basin to be under his jurisdiction as watermaster;

4 (2) a purchaser of water from the holder of a water right in the river basin
5 or segment of the river basin under his jurisdiction as watermaster; or

6 (3) a landowner of any land adjacent to the river or segment of the river
7 under his jurisdiction as watermaster.

8 (c) A watermaster holds office until a successor is appointed. The executive
9 administrator [~~director~~] may remove a watermaster at any time.

10 (d) The executive administrator [~~director~~] may employ assistant watermasters and
11 other employees necessary to aid a watermaster in the discharge of his duties.

12 (e) In a segment or basin in which the office of watermaster is vacant, the
13 executive administrator [~~director~~] has the powers of a watermaster.

14 (f) The executive administrator [~~director~~] shall supervise and generally direct the
15 watermaster in the performance of his duties. A watermaster is responsible to the
16 executive administrator [~~director~~] for the proper performance of his duties.

17 (g) A person dissatisfied with any action of a watermaster may apply to the
18 executive administrator [~~director~~] for relief.

19 SECTION 98 Section 11.454, Water Code, is amended as follows:

20 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER

21 A watermaster as the agent of the board [~~commission~~] and under the executive
22 administrator's [~~director's~~] supervision shall:

23 (1) divide the water of the streams or other sources of supply of his
24 segment or basin in accordance with the authorized water rights;

25 (2) regulate or cause to be regulated the controlling works of reservoirs

1 and diversion works in time of water shortage, as is necessary because of the rights
2 existing in the streams of his segment or basin, or as is necessary to prevent the waste
3 of water or its diversion, taking, storage, or use in excess of the quantities to which the
4 holders of water rights are lawfully entitled; and

5 (3) perform any other duties and exercise any authority directed by the
6 board [~~commission~~].

7 SECTION ~~11~~ Section 11.455, Water Code, is amended as follows:

8 Sec. 11.455. ASSESSMENTS

9 The board [~~commission~~] may assess the costs of the watermaster against all
10 persons who hold water rights in the river basin or segment of the river basin under the
11 watermaster's jurisdiction in accordance with Section 11.329 of this code.

12 SECTION ~~11~~ Section 11.456, Water Code, is amended as follows:

13 Sec. 11.456. MAINTAINING CURRENT STATUS (a) To protect water rights
14 holders in a river basin or segment of a river basin during the proceedings under Section
15 11.452 of this code, the board [~~commission~~] may issue an order or orders at the beginning
16 of the proceedings under Section 11.452 of this code or may request the attorney general
17 to seek injunctive relief to protect the water rights holders during the proceedings.

18 (b) On request of the board [~~commission~~], the attorney general shall seek
19 injunctive relief to carry out the purpose of Subsection (a) of this section.

20 (c) The board [~~commission~~] is not required to comply with the requirements of
21 the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
22 Civil Statutes) in issuing orders under Subsection (a) of this section and there is no right
23 of appeal from those orders.

24 SECTION ~~11~~ Section 11.457, Water Code, is amended as follows:

25 Sec. 11.457. ASSISTANCE TO WATERMASTER

1 The executive administrator [~~director~~] shall provide the watermaster with such staff
2 and facilities as are necessary to carry out this subchapter.

3 SECTION ~~10.2~~^{10.3} Section 12.011, Water Code, is amended as follows:

4 Sec. 12.011. PERMIT APPLICATIONS

5 The board [~~commission~~] shall receive, administer, and act on all applications for
6 permits and permit amendments:

7 (1) to appropriate public water for beneficial use or storage; or

8 (2) to construct works for the impoundment, storage, diversion, or
9 transportation of public water.

10 SECTION ~~10.3~~^{10.3} Section 12.012, Water Code, is amended as follows:

11 Sec. 12.012. EVALUATION OF OUTSTANDING PERMITS

12 The board [~~commission~~] shall actively and continually evaluate outstanding
13 permits and certified filings and shall carry out measures to cancel wholly or partially the
14 certified filings and permits that are subject to cancellation.

15 SECTION ~~10.4~~^{10.4} Section 12.013, Water Code, is amended as follows:

16 Sec. 12.013. RATE-FIXING POWER (a) The board [~~commission~~] shall fix
17 reasonable rates for the furnishing of raw or treated water for any purpose mentioned in
18 Chapter 11 or 12 of this code.

19 (b) The term "political subdivision" when used in this section means incorporated
20 cities, towns or villages, counties, river authorities, water districts, and other special
21 purpose districts.

22 (c) The board [~~commission~~] in reviewing and fixing reasonable rates for
23 furnishing water under this section may use any reasonable basis for fixing rates as may
24 be determined by the board [~~commission~~] to be appropriate under the circumstances of
25 the case being reviewed; provided, however, the board [~~commission~~] may not fix a rate

1 which a political subdivision may charge for furnishing water which is less than the
2 amount required to meet the debt service and bond coverage requirements of that political
3 subdivision's outstanding debt.

4 (d) The board's [~~commission's~~] jurisdiction under this section relating to
5 incorporated cities, towns, or villages shall be limited to water furnished by such city,
6 town, or village to another political subdivision on a wholesale basis.

7 (e) The board [~~commission~~] may establish interim rates and compel continuing
8 service during the pendency of any rate proceeding.

9 (f) The board [~~commission~~] may order a refund or assess additional charges from
10 the date a petition for rate review is received by the board [~~commission~~] of the difference
11 between the rate actually charged and the rate fixed by the board [~~commission~~], plus
12 interest at the statutory rate.

13 (g) No action or proceeding commenced prior to January 1, 1977, before the
14 Texas Water Rights Commission shall be affected by the enactment of this section.

15 (h) Nothing herein contained shall affect the jurisdiction of the Public Utility
16 Commission.

17 SECTION 10⁵ Section 12.014, Water Code, is amended as follows:

18 Sec. 12.014. USE OF BOARD [~~COMMISSION~~] SURVEYS; POLICY

19 The board [~~commission~~] shall make use of surveys, studies, and investigations
20 conducted by the staff of the board [~~commission~~] in order to ascertain the character of the
21 principal requirements of the district regional division of the watershed areas of the state
22 for beneficial uses of water, to the end that distribution of the right to take and use state
23 water may be more equitably administered in the public interest, that privileges granted
24 for recognized uses may be economically coordinated so as to achieve the maximum of
25 public value from the state's water resources,

1 and that the distinct regional necessities for water control and conservation and for
2 control of harmful floods may be recognized.

3 SECTION 106. (a) The powers, duties and administrative responsibilities
4 delegated to the Texas Water Commission under Subchapter I of Title 2 of the
5 Texas Water Code are transferred to the Texas Water Development Board.

6 (b) All references to the Texas Water Commission in Subchapter I of
7 Title 2 of the Texas Water Code are deemed to be references to the Texas Water
8 Development Board.

9 SECTION 107. (a) The powers, duties and administrative responsibilities
10 delegated to the Texas Water Commission under Chapters 50 through 56 of the
11 Texas Water Code are transferred to the Texas Water Development Board.

12 (b) All references to the Texas Water Commission in Chapters 50
13 through 56 of the Texas Water Code are deemed to be references to the Texas
14 Water Development Board.

15 SECTION 108. The importance of this legislation and the crowded
16 condition of the calendars in both houses create an emergency and an imperative
17 public necessity that the constitutional rule requiring bills to be read on three
18 several days in each house be suspended, and this rule is hereby suspended.

H. B. No.

2646

By

David Cant

A BILL TO BE ENTITLED

AN ACT

relating to the powers, duties and jurisdiction of the Texas Water Development Board and the Texas Water Commission or its successor agency and transferring certain responsibilities to the Texas Water Development Board.

MAR 12 1993

1. Filed with the Chief Clerk.

MAR 18 1993

2. Read first time and Referred to Committee on

NATURAL RESOURCES

3. Reported favorably (as amended) (as substituted) and sent to Printer at

4. Printed and distributed at

5. Sent to Committee on Calendars at

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of years, nays, present, not voting).

7. Motion to reconsider and table the vote by which H.B. was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of years, nays, and present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of years, nays, and present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of years, nays, present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of years, nays, and present, not voting).

12. Ordered Engrossed at

13. Engrossed.

14. Returned to Chief Clerk at

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

21. Regular order of business suspended by (a viva voce vote.) (years, nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION: OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record
(Substitute) Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____

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